Review of Legal Aid Services in British Columbia

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for the Government of British Columbia

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August 28, 1992

The Honourable Colin Gabelmann
Attorney General
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Gabelmann:

I am pleased to submit this report on legal aid services. It has been an honour to undertake this review.

Most of my consultations were with the many people who have direct interests in legal aid: lawyers; service providers; and a variety of community agencies and organizations. I was pleased by their generous responses to my enquiries, which were often at short notice.

There is great concern for legal aid services within the legal profession and the community. Serious difficulties with the management, delivery and cost of services must be addressed. However, a better quality, more accessible, and accountable service can be achieved within a responsible financial framework.

At the start of this review, you instructed me to find, to the greatest extent possible, points of co-operation among the interested parties. I have tried to keep this instruction clearly in mind in proposing how and where changes should be made. I am also reminded that people tend to resist change when they feel themselves under attack. While significant changes are outlined, they endeavour to build on the strengths that exist and to promote stronger working relationships among tariff lawyers, staffed services, community organizations and the Legal Services Society.

Two chronic complaints were poor service planning and the lack of effective voice felt by virtually everyone with a stake in legal services. Government and the Legal Services Society must both improve their consultative processes over the long term.

This report covers most of the issues as thoroughly as possible within the time frame established for the review. A consultation process with a coalition of women's groups was not finished by this date; I believe my report will not conflict with their recommendations.

Time limitations prevented undertaking an important review of native legal services and their relationship to the Legal Services Society. I hope these consultations will be commenced without delay, and with first nations representation in the process.

A number of issues were raised which fall outside the strict field of legal aid services. They merit examination, but could not be properly considered in this review. I will provide you with additional comment on these matters as I conclude my work.

A lawyer commented that public legal services should be seen as "operating in the interests of the public, as the Ombudsman's office is regarded." If this report shows signs of irritation or impatience, it is because we have some distance to travel to attain that standard. We should expect no less; I hope this document helps us to move forward.

Respectfully submitted,

Timothy Agg

Timothy D. Agg

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I wish to thank the following people for their co-operation and generous assistance:

Ms. Sheila O'Reilly, for organizing the provincewide meetings, and for excellent administrative assistance.

Mr. Edgar Hall, for persistence with difficult data, attention to detail, and an admirable capacity to synthesize complex information.

The management and staff of the Legal Services Society for accommodating our frequent requests for information.

Mr. E.R.A. Edwards, Q.C., Deputy Attorney General, and ministry managers and staff for their assistance, especially David Duncan, Rick McCandless, Jim O'Hare and Mary Beeching.

Those who attended meetings and otherwise participated in the review, including board members and staff of native and community law offices, branch office staff, local bar members, service agency personnel and advocacy groups. A special "thank you" to the clients whom I was able to meet.

Limitations of the Review

The following limitations should be noted respecting this report:

- it was not possible to visit all branch, community or native programs offices, nor to meet with all interested parties;
- not all communities were examined, so assessments should be considered representative rather than exhaustive;
- it was not possible to extensively review legal aid plans in other jurisdictions;
- issues respecting native programs were not addressed in any great detail, as they merit greater review and consultation than time allowed; this consultation is of considerable importance and should proceed without delay; and
- issues external or peripheral to legal aid services have been noted, but not addressed in detail; they need additional review.

Note: The terms legal aid, legal aid services, public legal services, and legal services are used more or less interchangeably in this document, as they are all in common usage in the profession, the service system and the community.

Executive Summary

INTRODUCTION

The Legal Services Society must overcome a history of financial, management and service delivery problems. These are the result of years of divided leadership, chronic underfunding, inadequate service priorities and insensitivity to client and community needs. A thorough overhaul is required, but one which builds on the best elements of existing services. More co-operative working relationships among the key stakeholders are also necessary, along with improved society leadership and management. The financial and service delivery strategy proposed in this review aims to improve service accessibility and delivery within a responsible financial framework.

SUMMARY OF FINDINGS

A serious financial deficit resulting from:

- the 100% tariff increase in June 1991;
- high volume increases, in the order of 22% in 1991/92;
- projected expenditures of over $98 million in 1992/93, against revenue of $77 million, despite doubling of the government allocation; and
- no corrective action by Legal Services Society.

Extensive management and organizational problems resulting from:

- conflict within the society board, between board and management, management and funded agencies, and management and the bar;
- inadequate leadership and management; and
- failure to involve key stakeholders, especially community groups and agencies with expertise in the needs of legal aid clients, in service planning and management.

Service delivery problems, including a crisis in family legal aid resulting from:

- different service structures providing similar service, each with separate reporting relationships to the society;
- excessive priority given to criminal legal aid, to the detriment of family and civil/administrative poverty law service;

- inconsistent availability of service in many communities throughout the province, most notably in family and other poverty law matters;
- lack of local counsel to accept family referrals and an inadequate family tariff;
- complex, inadequate policies, inconsistently applied, especially respecting eligibility; and
- failure to provide an effective mix of services, while maintaining artificial and ineffective distinctions between tariff and staffed services.

OPTIONS

It is not feasible to reduce expenditures without a serious impact on service quality, accessibility or harming those services government most wishes to improve. In order to operate within the 1992/93 budget allocation of $71.5 million, the society would be obliged to cut tariffs by at least 25%, or reduce tariffs by 20% and all staffed services by 50%, plus additional service coverage restrictions to reduce the caseload. Impact would be felt least by criminal legal aid clients, and most by clients requiring family and civil/administrative poverty law services. The deficit would remain.

Restricting the society's mandate would hamper the ability of the society to reduce high cost lawyer services by increasing less costly information and summary advice services. Court mandated services in criminal, immigration and criminal duty counsel matters would leave family and other poverty law services most vulnerable. Elimination of criminal legal aid for certain offenses, such as impaired driving, would lead to further court challenges.

Conversion to a fully-staffed model, often referred to as the public defender option, is impractical and problematic; it is not recommended.

The Legal Services Society has significant scope to improve the volume, accessibility and quality of services at current rates of expenditure. It can, and must, reorder its priorities, and must reallocate resources to provide a more effective service.

A variety of measures are available and must be pursued, to ensure a more efficient and accountable use of public funds. In isolation, these meausres will not result in significant savings. Together, they will offer greater efficiency and credibility. They include: clear and consistent eligibility rules; replacement of present user fees, now generally not collected, with a graduated scale of client contributions based on ability; appropriate financial verification checks and prosecution of fraud; increased audits of applications and lawyers' billings; and better monitoring of services, including tariff services.

PROPOSED STRATEGY

A strategy is proposed to overhaul the society's structure, management and service delivery. It utilizes the strongest elements of existing services, but is managed in an integrated, effective, accountable manner. Community-based management, increased paralegal and staff lawyer services, a vigorous tariff bar and improved community advocacy services form the elements of the strategy. Ensuring they work together will be the new management challenge for the society.

SUMMARY OF RECOMMENDATIONS

Finance

- Accept the projected 1992/93 expenditure of $98 million as the baseline budget and ensure the society ends the year in a deficit free position.
- Cap the 1993/94 budget allocation at $98 million, and legislatively prohibit future deficits.
- Develop a mechanism to incorporate uncontrollable volume increases into future budget requirements, provided resources are managed effectively.
- Require work plans for 1992/93 (balance), 1993/94 and 1994/95; complete a financial and program audit by September 30, 1994.
- Require the society to maximize service effectiveness and demonstrate it is making the best possible use of funds; ensure that generated savings are re-assigned within the legal services system to expand and enhance service.

Management and Organization

- In next session of the legislature, amend the *Legal Services Society Act* to clarify the society's mandate and independence, codify bylaws, place society administrative practices within jurisdiction of Ombudsman, clarify role of paralegals and courtworkers, address conflict of interest, expand appointing authorities to the board and provide for a trusteeship in case of an emergency situation.
- Implement relevant sections of Deloitte & Touche report respecting: society leadership and management; review management information needs; including the society's information and education staff in client service planning; set standards for service delivery; improve training services; and implement quality control measures.
- Improve consultation process with all stakeholders.

Service Delivery

- Establish fair and equitable eligibility rules, including an appeal process, written in plain language and published. Replace user fees with a graduated scale of client contributions.
- Establish tariff management controls, including tracking adjournments, improved tariff referral policies, and closer co-operation between local bar and local offices.
- Improve services to persons with disabilities. Improve services to people whose first language is other than English.
- Adopt a more flexible mix of tariff and staffed services, with increased use of paralegals and increased collaboration of, and support to, lay advocates.
- Assign to the society responsibility for funding, training, legal supervision and monitoring of expanded lay advocacy programs.
- Ensure equitable allocation of resources to family, civil/administrative and criminal law services.
- Include mediation capability in family service.
- Reduce criminal tariff by approximately 10%, with the savings allocated to improving the family and human rights tariffs; establishing a limited civil tariff; considering a senior tariff; reducing carrying of disbursements on family cases; tieing future tariff to comprehensive policy on public sector lawyer compensation.
- Adopt a three-year plan to: expand staff of local offices; increase number of local offices; and improve working relationships between tariff and staffed services. Finance this plan by assigning about 25% of current tariff caseload to staff delivery. In third year, staffed services may handle up to 50% range of present tariff caseload.
- Increase local access to service throughout the province, and ensure choice of counsel where appropriate.
- Place responsibility for local/regional services under the control of community boards, with authority for local budget, staff and service planning. The society will set service delivery standards, ensure quality control and accountability, establish provincial service policy, and maintain fiscal control. Provision is made for consistency in wages, benefits, supervision, seniority and career mobility.
- Finally, most of these measures can be implemented prior to legislative change. The sooner implementation commences, the sooner the service and financial gains will be realized.

ADDITIONAL REVIEW

Time limitations prevented thorough review of a number of matters; additional review is recommended, as follows:

- A thorough consultation process is required respecting native legal services and their relationship to the society. This work should be undertaken by the government at the earliest opportunity.
- A number of issues respecting other parts of the justice system, and respecting broad government policy in family law, were identified in the review as meriting further examination; the review confined itself necessarily to matters internal to legal services.
- Additional detailed consultation will be required respecting: legal aid services to immigrants and refugees; prisoners; youth charged under the *Young Offenders Act;* duty counsel services; courtworker services; and achieving optimal use of information and educations services.
- The recommendation to fund increased lay advocacy services and to assign responsibility for them to the society will require additional investigation and consultation.

CONCLUSION

This review is critical of the present state of finance, management and service delivery of public legal services in British Columbia. Much must be done to ensure that the Legal Services Society, and the delivery of legal aid, attains the highest degree of public respect and trust.

Significant change is proposed in this review. The valid and necessary roles of all service providers – private bar, staffed services, community advocates – are respected. None get their way in all circumstances. Each is asked to work together to implement this strategy in good faith and in the best interests of those who are poor and disadvantaged.

The Legal Aid Environment

HISTORICAL OVERVIEW

Legacy of the Bar

The legal profession rightly takes pride in promoting the principle that access to justice must not be precluded by poverty, and in its responsibility for the early development of legal aid services.

Legal aid was first introduced in British Columbia as early as the 1930s. Until 1952, assistance was provided in civil cases only; volunteer lawyers gave summary advice and referred cases to firms willing to provide free representation.

Assistance for first offenders in serious cases commenced in 1952. The Law Society paid administrative expenses. Government became financially involved in 1964, providing a small honorarium for lawyers.

In the late 1960s, University of British Columbia law students established a storefront clinic (later the Community Legal Assistance Society) through the Inner City Service Project, to provide casework, public education, test case and law reform services.

The Legal Aid Society was founded in 1970, assisted by the newly established Law Foundation, to provide criminal legal aid on a "judicare" model: private lawyers were paid through a tariff financed by the province. Provincewide coverage was provided by a network of volunteer area directors who took applications and referred eligible persons to lawyers.

The 1970s were a period of rapid growth in public legal services. The Legal Aid Society opened 15 branch offices, each staffed by two lawyers and a secretary; they provided duty counsel and some criminal trial services, but focused mostly on civil matters. A federal-provincial cost-sharing agreement was initiated for criminal legal aid. A family law tariff was established, financed by the province and cost-shared under the Canada Assistance Plan. Meanwhile, several community programs entered the field, including Community Legal Assistance Society, the Civil Liberties Association, the Elizabeth Fry Society, the John Howard Society and others; they received project funds from a variety of sources.

In 1974, the Attorney General created the Justice Development Commission. A Legal Services Division was established to plan the future development of legal services. It also assumed funding responsibility for a variety of programs.

[Note: The review notes with appreciation its reliance on an Advocate article by David Tupper for much of the historical background; interpretative comments are, however, my own.]

A report by Mr. Peter Leask proposed a decentralized, community-based approach to the delivery of legal services. In 1975, the legislature created the Legal Services Commission to provide for the independent planning, management and funding of public legal services. The commission operated programs directly and funded the Legal Aid Society.

Diversity and Conflict

The growth of community-based legal services was accompanied by conflict and mistrust, the echoes of which have contributed to the present difficulties. The new services, and the new governmental role, challenged some of the assumptions and values which had stimulated the bar into legal aid work in the first place.

The priority which community-based programs attached to "poverty" law conflicted with the dominant professional view of priority remaining with assistance to individuals facing criminal charges. Similarly, community and aboriginal insistence that education and community development be included in the service mix, conflicted with the traditional professional view of what constituted a "legal service."

The new community law paralegals, many of whom came from advocacy and self-help programs, were seen by some as improperly intruding on the practice of law. Lay involvement in legal services raised sometimes legitimate fears of cavalier attitudes towards due process and confidentiality. Lay boards were perceived by many lawyers, and with some justification, as inadequately understanding the foundation principles of our justice system, and therefore as likely to harm clients as to benefit them.

For their part, community groups involved in legal services often saw the profession as self-interested, insensitive to the poor and disadvantaged, and unwilling to share the stage.

At times it became difficult to distinguish between arguments of principle and the protection of turf.

A wary co-existence developed, with some heartening signs of co-operation, but with a continuing high degree of mistrust. All elements in the new service system worked continuously to maintain their presence and funding.

Merged But Not United

In 1979, the province decided to merge the commission and the Legal Aid Society into the Legal Services Society.

The Legal Aid Society brought to this partnership criminal and family tariff services, along with its network of branch offices and area directors. The commission contributed: a legal resource centre; public information programs;

a native programs branch, with funding responsibility for a network of native community law offices; various community law offices which were engaged primarily in family, civil and administrative poverty law; and funding commitments for other programs.

The new society brought most legal services programs under one roof. Notable exceptions were the Native Courtworker and Counselling Association, funded directly by the Ministry of Attorney General, and some community-based agencies, such as Community Legal Assistance Society, funded mostly by other sources, such as the Law Foundation.

The society opted to maintain all the various service elements. It did not, however, integrate them into a single system. Legal aid branch offices became branch offices of the society, funded community law offices continued as such, and native community law offices continued to function with a high degree of autonomy.

Over the years, community and native offices assumed area directorship duties, adding legal aid intake and tariff referral to their services. Branch offices were encouraged to become more active in civil non-tariff work. Nevertheless, the structure remained remarkably diverse.

Over time, the effectiveness and durability of the community and native community law offices has lowered the mistrust of the rest of the system and of the bar. However, there remains generally poor contact among the various parts of the service system, and between the service system and most of the profession.

A Wary Relationship and Funding Difficulties

The society has experienced periods of poor relations with government, accented by periodic efforts by the Ministry of Attorney General to exert greater control, and by occasional criticism of government by the society.

The society has generally received financial resources barely adequate to maintain existing services. At the same time, court-ordered levels of service were imposed in criminal cases, the provision of duty counsel, and refugee and immigration hearings. These decisions, which constrain the society in controlling the volume of cases, seem to have had little impact on financial planning by government.

Tariffs were increased 8% in each of 1979 and 1980 and a further 38% in 1981. Yet payments traditionally lagged far behind the rates charged to paying clients for similar services. Serious geographic gaps in the location of branch or community law offices remained in communities as large as Vernon, Courtenay, North Vancouver and Richmond. Demands from community and native community law offices for service expansion were largely rejected.

Funding reductions in 1982 led to: a 12.5% reduction in the legal aid tariff; staff reductions throughout the system; the closure of offices; and restriction of both client eligibility criteria and service coverage. Many of those responsible for managing and providing services described the subsequent years as "a state of siege."

In response to widespread concern about the quality of legal services, the province established a task force, chaired by (then) Deputy Attorney General Ted Hughes, which held extensive hearings throughout the province and reported to the Attorney General in 1984. This report was warmly embraced by the legal profession as establishing suitable baseline standards for legal services. It was largely ignored by government.

The 1988 report of the Justice Reform Commission, again chaired by Deputy Minister Hughes, called for the implementation of the 1984 recommendations respecting legal aid services.

There is no doubt that government failed, over many years, to establish a rational and adequate financial framework for the delivery of public legal services. This failure has contributed significantly to the present difficulties.

Emergent Advocacy Services

An important development of the last decade was the growth of community-based lay advocacy services. Advocates, usually staff but often volunteers, can be found in transition houses, women's centres, organizations for disabled people, anti-poverty groups, multicultural service centres, human rights organizations, mental health groups, criminal justice organizations and so on. Despite (or perhaps because of) minimal public funding for advocacy services, many programs developed a high degree of sophistication and skill. They now form a major access route for individuals in need of legal aid services, and therefore have valuable perspectives on those services.

Advocacy programs fall within the legislative mandate of the Legal Services Society. Its public information and education unit has provided them with generous encouragement and limited financial support. However, the society does not fund their staff positions or consider them as core legal services to the poor. Instead, the Law Foundation has become the major funder of some of these services, whereas others rely on volunteers or limp from month to month on whatever grants can be patched together. They have grown to such an extent that the foundation has established standards of legal supervision and has developed a training program for its funded agencies.

Recent Developments

In recent years, the Legal Services Society's funding situation gradually improved, as did its willingness to run deficits. Tariff increases were implemented in January, 1986 (14.3%, reversing the 1982 cutback); August, 1987 (25%); January, 1988 (32% in family only); October 1988 (10%); January, 1989 (5%); and January, 1991 (6%). The society gradually re-opened some of the offices closed in the early 1980s, expanded coverage and adopted a flexible financial test for applicants.

In 1991, many of the lawyers doing legal aid work decided to organize. After failing to convince the society and government of their case for a large tariff increase, they withdrew services in April. The settlement of this dispute resulted in an immediate doubling of the tariff rates.

In November, 1991, the Ministry of Attorney General released to the Legal Services Society a report requested by Treasury Board at the time funding was increased to cover the new tariff. The report indicated that conversion from the judicare to a public defender model of providing criminal and family legal aid could achieve significant savings while maintaining service quality. The report caused an immediate and angry response from lawyers, and serious conflict within the board and management of the society.

Also in late 1991, the Attorney General was notified of serious internal management difficulties within the society. The board had commissioned consultants Deloitte & Touche to review a variety of management issues. Their report was highly critical, and precipitated a series of changes to management personnel, resulting in further conflict.

Meanwhile, the minister also heard concerns from community sources regarding the policy directions of the society, especially regarding services in family, civil and administrative areas of law.

Finally, the government was increasingly alarmed at rapidly escalating costs of legal aid. The provincial allocation more than doubled in one fiscal year; at the same time, accusations were being made that the government was "cutting back" on legal aid.

On February 20, 1992, the minister initiated this review of legal aid services with direction to report within six months.

MANDATE AND SCOPE OF THE REVIEW

Process of the Review

The process established for the review was as follows:

- to review pertinent reports and data from the Legal Services Society, the Law Society, interested bar organizations, the Law Foundation, community and native community law offices, and other interested parties;

- to consult with the various interested parties, including community organizations, to ascertain their views respecting the problems, needs and opportunities for providing effective public legal services;
- to assess the possible extent of, and opportunities for, co-operation among the interested parties in providing effective public legal services; and
- to make recommendations to the minister respecting all aspects of the delivery of legal services.

Issues before the Review

The major issues considered in this review are as follows:

- the availability, accessibility and quality of present services;
- the adequacy of service planning and the suitability of various service delivery models;
- the adequacy of the system's accountability, administration, management and leadership; and
- the costs of legal services, mechanisms to control and, if possible, reduce costs, and mechanisms to ensure the highest possible quality, range and accessibility of services for the funds expended.

SUMMARY OF ISSUES

Service Delivery

Service delivery is problematic. Criminal legal aid is generally well provided and access is reasonable. Even here, though, there are significant quality and administrative difficulties. No other services presently achieve an acceptable level of access or quality. Some of the reasons for this are financial, in that budgetary allocations for them have remained inadequate. However, there are also serious organizational and service management deficits to be overcome.

Services are provided both through the legal aid tariff and by staff, the latter employed by the society or contracted agencies. There is no inherent logic to determining the particular method of service delivery, beyond a long-standing bias in favour of the tariff in criminal, family and immigration matters, and in favour of staff in other civil matters. The inadequacies of each tend to be ignored, contributing to already serious accessibility and productivity problems.

The society tends to use a very narrow definition of a "legal service," and provides a narrow range of services. These result in false economy: for example, in many family cases the provision of information (regarding the legal system, options and so on) and emotional support are essential to enable a client to properly instruct counsel on a clear course of action. Failure to provide this initial service contributes to inefficient and frustrating lawyer service. Similarly, better interaction between work that can be done by paralegals and work properly done by lawyers can result in service which is both more efficient and more effective.

There is a need to rethink the organization of service. To use a health system analogy, legal aid sends most clients directly to specialists, without ever being seen by general practitioners or emergency wards, let alone public health nurses. It also presumes every practitioner to be a neurosurgeon. Better intake, better screening, better referral to multi-disciplinary services, better timely use of paralegals for both service and preparation for lawyer referral, better selective use of senior and specialist counsel could all result in better quality and more cost-effective service to clients.

Debate continues regarding the role of information and education, assistance to disadvantaged groups, and the value of community and justice development work pertinent to client constituencies. Although much of the work done to date has been a poor fit with the mainstream service system, there is considerable potential for these strategies to complement individual client service.

There must be greater local and provincial involvement in planning, delivering and evaluating the service by front line staff, the private bar (including various specialist areas), lay advocates and community groups whose clientele use legal services. The dominance of leadership by the legal profession, particularly the criminal bar, has not been healthy; greater balance is required.

The administrative service structure has the strength of diversity. However, the system is not adequately integrated; parallel structures continue, and none is utilized to its potential. There is neither logic nor consistency in the assignment of central versus local authority and responsibility.

The society does not maintain an adequate information system to document all service or work performed by the system, and the data that are collected are not consistently used, locally or provincially, for either control or planning functions. Few mechanisms exist to monitor service quality, productivity or cost, whether delivered by tariff or staff. The system is marked by a disturbing absence of service planning.

Service administration must be improved. There are few effective feedback loops to monitor service quality. Superior service is as often overlooked as poor service. Improvements are required in administering client eligibility, tariff referral and the provision of tariff services. Abuses exist; they are not extensive but they appear in many communities. The credibility of the society and the bar suffers as a result. Allocation of suitable resources to deal with these problems will help the system to become self-correcting; some savings are also likely.

System Change

There has been heated debate about whether tariff services are inherently better than, and more or less costly than, staffed delivery. It was the wrong debate. It became a simple battle over turf and self-interest.

Staff delivery is now less costly than the tariff. Arguments which assert the inherent primacy of private bar services are weak. At the same time, there are significant difficulties with the present staffed systems, especially given poor management in recent years.

There are compelling reasons, both pragmatic and principled, to reject a system which is fully, or almost fully, staff delivered, and this path is not recommended.

The question of service delivery models must be examined from the perspectives of client need and efficient, effective response. In so doing, it is difficult to escape the conclusion that this province would be best served by a more flexible mixed system offering comprehensive service.

Instead of slicing the system as we do now – criminal and family to the tariff, civil to staff – we should determine the mixes of staff and tariff services, in what sequences, and with what working relationships will deliver the best, most accessible, most timely service to clients.

Similarly, it is necessary to re-think how the system is governed, to achieve a better balance between central and local authority, and to create a larger policy-making table, at which lawyer perspectives are joined by other community perspectives.

Rethinking service delivery along these lines is demanded by client interests. The changes proposed, while substantial, are not new to B.C.; they can be found in parts of the existing structures and services. They do not compromise the essential principles of legal aid; indeed, they build on them. They will work because we have experience with them. They will benefit clients and service providers, staff and private bar, alike. They will extend accessibility. They will significantly improve service availability, especially in family and civil matters. They will produce more service per dollar spent than at present. And much more can be achieved with current expenditures.

Significant changes are proposed, including the reallocation of resources, and the restructuring of the Legal Services Society and its networks of local offices. Initial steps can proceed in a manageable fashion and without delay if the society includes the local offices, local community groups and local bar in planning and implementation.

Structure and Management

Changes to the *Legal Services Society Act* are proposed, including a restructuring of the society board. The province and the Law Society will continue to appoint directors, with appointing authority proposed for the boards of a restructured local service system and for the boards of native programs offices. This change expands the partnership to include local service and client constituency perspectives and enhances decision making.

Branch and community law offices should be integrated. Community boards for each are proposed, with provisions for transition, structural diversity and adequate local representation of significant interests. A further transition to regional, rather than local, boards is proposed where suitable. Staff of the new structure would be protected, and would receive enhanced career opportunities, through a master/component structure dealing with employment, remuneration, working conditions and career issues.

Provision is made for both comprehensive and specialized local services.

Provision is made for the participation of native programs offices in the new structure, noting that a full consultation process with first nations communities has not yet been undertaken; this report does not pre-judge that outcome.

Society leadership and management have been inadequate, and were the objects of widespread dissatisfaction in the review consultations. Proposals are made supplementing the Deloitte & Touche study, and flowing from the service delivery conclusions contained in this report. Resolution of the leadership and management problems is a prerequisite to achieving service and fiscal health.

Financial

The 1992/93 budget of the Province of British Columbia more than doubled the government allocation to the Legal Services Society, an increase not made to other significant public services in a difficult economic climate. Nevertheless, the government was accused of "cutting back" on legal aid.

1992/93 society income:

Government of B.C.	$ 71,511,940
Law Foundation	4,000,000
Other	1,500,000
Total	**$ 77,011,940**

Projected 1992/93 expenditures	$ 97,655,476
Deficit to March 31, 1992	$ (4,300,000)
Projected deficit, March 31, 1993	$ (24,943,536)

The dimensions of the financial difficulty can be explored by considering the measures necessary for the society to operate within its 1992/93 income level:

- a tariff cut of at least 25% would be required. In the alternative, a 20% tariff cut and a roughly 50% cut in the existing staffed systems; however
- this does not account for case volumes which continue to grow rapidly. Therefore eligibility cutbacks of up to 20% of the client base would also be required;
- none of the service gaps or inequities identified in this report would be addressed;
- because of court-mandated service, criminal and immigration services would be least affected; family and civil/administrative services would be drastically affected; and
- the deficit would remain.

Legal aid costs have increased rapidly for the last two years and they continue to increase. There are three reasons for this. First, historically, the society was seriously underfunded by government, and inadequate budgetary provision was made for volume increases, even though the society is bound by court decisions which mandate service. Second, tariff rates were doubled in 1991. However, much of the funding for this increase in 1991/92 was a one-time grant by the Law Foundation, which distorted the required 1992/93 increase. Third, caseloads continue to rise at rates exceeding 20% annually, consistent with court list increases.

There are also organizational obstacles. The board of the society has thus far not addressed changes to increase efficiency, improve services or reduce costs. This has stemmed partly from its own conflicts, partly from concern to await the results of this review. There were also reports of "playing chicken with government" promoted by some interests.

Several new board appointments have been made in recent months, with six of the 14 appointed since April. A new executive director commenced work on June 8, 1992. Recruitment is under way for three additional senior managers, both implementing the Deloitte & Touche proposals and replacing a decimated management team. It will take several months for the new management to fully take the reins.

There are also logistical obstacles. Time lags exist between client referral and payment for service under the tariff. Twelve months after intake, only 80% of family cases and 90% of criminal cases have been billed. The balance may take a year or two longer to bill.

Given actual and committed expenditures, neither complete elimination of the staffed systems, significant cuts to the tariff, nor immediate conversion to half or full staff delivery would yield adequate savings to balance the budget in fiscal 1992/93.

The changes required to deal effectively with the organizational, service delivery and financial problems will require a minimum of two years to achieve full results. While their implementation would result in substantial financial flexibility now unavailable, they require suitable planning time and phased implementation in order to succeed.

Finally, further caseload volume increases can be anticipated in the coming years. There are no financial "quick fix" solutions available.

Cash Flow Crisis

The short-term financial position is also complicated. While the society is spending at an annual rate of nearly $98 million, the government is forwarding monthly contributions based on its $71.5 million allocation. A cash flow crisis will appear by the fall of 1992 and must be addressed.

The immediate financial issue for government is the extent of the deficit it is willing to tolerate until changes can be implemented. This question must be balanced against concerns regarding service quality and accessibility.

Government is urged to adjust the 1992/93 budget allocation immediately in order to ensure the society has sufficient cash income to meet its commitments.

Proposed Strategy

British Columbia can have a vastly improved legal services scheme at current rates of expenditure. Most of the core elements of the plan outlined below can be accomplished without additional cost and without serious negative impacts.

However, the present budget allocation is not adequate. The current budget can be achieved only by unacceptably high reductions in both tariff rates and client service.

In general, staff delivery is less costly than tariff delivery. However, there are several problems with previous costings. First, the very poor state of Legal Services Society organization and management was not accounted for. Second, the staffing costs used were regarded as too low in the circumstances. Third, caseload figures are regarded as too optimistic. Fourth, existing or needed non-tariff civil and administrative work was not accounted for. And fifth, caseloads were not examined on a community-by-community basis. Therefore, while the general conclusions are accurate, the earlier costings are overly optimistic with respect to savings that could be expected.

The following financial and service changes are recommended for the balance of 1992/93 and 1993/94. The plan was prepared using the society's most recently available caseload data; positions were added only where justified by the data. Because there is work done by native programs offices that is not captured in the data, and because consultations with them remain outstanding, a number of these offices are omitted from this scheme for the time being. There is room in the approach to accommodate any additional staffing needs.

- Government should accept the projected expenditures of the Legal Services Society for fiscal 1992/93 as a necessary and legitimate baseline for the delivery of adequate, accessible, comprehensive legal services, excluding only full consideration of native legal services needs, and without considering potential impact of other justice system changes that might be contemplated by government.
- Government should not allocate additional funds to the society in fiscal 1993/94 except for any approved wage/tariff increases and volume adjustments, and then only after the society demonstrates productivity improvements in existing services.
- The society should immediately increase staffed offices to assure: equitable basic service in criminal, family and civil in all locations, including substantially increased civil and family caseload volumes; improved ability to monitor tariff services through staff sharing in criminal and family matters, including duty counsel and court work; and enhanced "front end" service to clients prior to lawyer referral, and other additional services that can be performed by paralegals.

  Staff of existing offices should be enhanced where supported by the caseload data. Each should then be capable of providing staff participation in criminal and family courtwork to existing levels of civil/administrative services and enhanced "front end" service at point of intake.

  Two community offices, including a native programs service, will open in Vancouver and the Gastown office will also have its staff expanded.

  New offices will be located in suburban Victoria, Surrey (native office), and Langley (now funded by Law Foundation).

  New offices will replace several area directorships where volumes warrant, including North Vancouver, Richmond, Vernon, Duncan, Salmon Arm, Sechelt, Squamish, and Port Alberni or Parksville.

Additional pilot projects are proposed for New Westminster - Coquitlam (integrated service), Kamloops (family law) and Prince George (criminal, and possibly modified tariff mechanisms).

These measures will be financed by the reallocation of sufficient tariff dollars and cases to the staffed system to cover the projected costs. They will save some money and will extend service, improve service quality, and significantly increase the total caseload at no additional cost.

- The staffing, cost and workload estimates used were very conservative; actual productivity will be considerably greater if managed effectively. This will allow for enhanced service or absorption capacity for further volume increases.
- The society should write and publish clear and consistently applied financial and coverage eligibility rules. This will result in increased credibility and small savings; amounts cannot be estimated reliably.
- The elimination of present user fees is proposed, at no cost because virtually none are now being collected.
- The introduction of a graduated scale contribution scheme for clients presently eligible and whose incomes are above the low income chart will generate modest revenues; amounts cannot be estimated reliably.
- The criminal tariff paid for new cases should be cut immediately by approximately 10%, and the new rate should be deemed to be the appropriate baseline. The funds saved should be allocated to increasing the family tariff.
- The immigration tariff should remain unchanged.

  The human rights tariff should be brought into line with the other tariffs.
- Legal services/advocacy programs now funded by the Law Foundation should be transferred to the Legal Services Society and incorporated into the service system, at a cost of about $1 million. This would be paid for by savings generated by improvements within the society's operations. The Law Foundation should reassign the funds saved to projects which respond to emerging legal services needs or projects ancillary to mainstream legal aid services.
- A mediation component to the family law service should be introduced. While care is required to ensure suitable standards of quality, there is no requirement that mediation must be done by lawyers in all cases (indeed such a requirement would functionally eliminate this option for most geographic locations). There is a need for

effective service monitoring and data collection. While a mediation capability is not intended to save money it will, coincidentally, contribute to a more cost-effective service.

- The headquarters of the society will require resources which can be generated from internal savings: training needs will increase dramatically; the resource centre needs to be expanded to make it better connected and more useful to field offices; and the same for information and education services. Headquarters will have to become more useful, not necessarily smaller.

All of these measures can dramatically increase service access and coverage, and can go a long way towards increasing service quality in all areas of poverty law. They will also result in more effective and efficient use of funds, including the tariff. They will not reduce public expenditures for legal services, but they will enable government to demand and get much more service in return.

Additional measures to control costs and extend services are available, for the purpose of further enhancing services. No one measure will generate large amounts.

- After the initial staff system changes, it would be possible in year three (fiscal 1994/95) to transfer additional cases from the tariff to the staff system to achieve roughly 50% of cases being handled by staff; by the fourth year, this would achieve savings of about $7 million for re-allocation.
- There may be room for additional options in criminal tariff: negotiate half-day and full-day income ceilings; in high volume areas, attempt to obtain contracts with some of the high billing lawyers to reduce cost in favour of greater income certainty; in high volume areas, call for tenders for contracts.
- Over time, these staffing arrangements should result in savings, for example, by diverting a number of family cases to paralegals. Also more effective screening at and after intake will help to control at least high-cost service.
- Improved monitoring may result in reducing the number of adjournments and create savings for the legal aid budget and other parts of the justice system.
- A modest investment in provision of legal supervision and staff or volunteer training of lay advocates in community organizations and services would additionally enhance the ability of the society to provide service and improve the streaming of client intake.

- Funding the salaries and benefits of lay advocates (and thereby being able to establish and enforce standards of training and competence) would also help to extend a highly cost-effective service.

There are other measures which could result in legal aid cost savings, but which would require other systems to alter their own policies or legislation. These require additional investigation. More immediately, the credibility of the Legal Services Society in calling on others to mend their ways will be considerably enhanced once it has demonstrated an ability to look critically at itself.

Finally, there are some measures which should be avoided:

- It may be tempting to restrict legal aid coverage, the most publicly palatable option being to refuse coverage for impaired driving charges, and perhaps some other "low-level" offenses. The active opposition of the bar and some others can be expected, including court challenges, and they are not recommended.
- Further tariff cuts are not recommended. Government is strongly urged to develop a consistent framework for all publicly-funded lawyer compensation, including the tariff. However, if quality work is expected, lawyers should be paid appropriately, taking into account the low-risk nature of income once a referral has been accepted.
- It is also possible that some interests may propose alternatives to this proposal. This report attempts to balance both financial and service quality concerns. Most of these proposals have merit for the service improvements they offer; that they also offer better financial value is an added benefit. Alternative proposals should be required to meet the same dual test.

No one measure can save large amounts of money. Even added together, we can anticipate perhaps a few millions, at best. Prudence with public funds demands that the Legal Services Society achieve whatever efficiencies are possible. Even so, there are persuasive arguments to keep savings in the system to enhance weaker areas of service, which will not be fully solved by these measures.

Additional Needs

Native Programs

The foregoing does not take into account needs with respect to native legal services. Although this staffing model does provide for additional staff to some existing offices (based on the reported caseload) plus some new services, more will be necessary.

Other Government-Funded Advocacy

This review does not include attention to other advocacy issues under provincial jurisdiction, and which ought to be brought under the society: workers' advisors for WCB matters; mental health advocacy; human rights advocacy; advocacy services and representation on behalf of children in care and those affected by apprehensions; and so on. All these will require attention and funds. The government should make an early commitment to the principle of locating such advocacy services in an independent Legal Services Society, and should carefully review an appropriate level of funding to the society for them.

Law Foundation

It is considered very important to free up the Law Foundation from ongoing support of many established advocacy services which properly should be included under Legal Services; this is in order that the foundation can spend the next ten years responding to future emerging needs and promoting some experimentation.

Implementation

The following order of priority should be assigned to implementation of the recommendations in this review.

Target: October 31, 1992

- complete recruitment of management team;
- complete review of financial eligibility, coverage, contribution and user fee issues and implement changes, including publication of suitable policy and guidelines;
- realign tariffs by reduction (10%) of criminal and reallocation to increase family; increase human rights tariff;
- complete plans for reallocation of tariff resources in order to increase staff in existing offices;
- complete planning for all pilot projects; and
- complete staff training plan.

Target: December 31, 1992

- complete planning for all new offices;
- complete hiring for all existing offices;
- complete consultations with local offices regarding organizational changes;
- all pilot projects in operation;
- complete planning for improvements to management information system, including suitable workload measures for both tariff and staff delivered services, and including additional staff hired;
- complete planning for introduction of mediation service; and
- complete planning for legislative amendments.

Target: March 31, 1993

- complete hiring for all new offices;
- complete incorporation of new local societies and selection of founding boards in all existing branch offices; and
- complete implementation of management information system changes.

Target: June 30, 1993

- complete legislative amendments and proclaim.

This time frame demands that the Legal Services Society and the government make decisions without undue delay. It may be advisable for the government to offer assistance to the new management of the society during this period.

Discussion

The Legal Services Society is in need of a serious overhaul. The financial and service issues are critical.

At the same time, the major proposals for change draw on structures, experience and expertise which are located within the existing system. It has been a source of intense frustration and of great optimism to see that the elements of a highly effective service that can live within its means have been present all along. What was missing was the need, or perhaps the pressure, to assemble the elements in new ways. That time has come.

The society cannot implement these changes on its own.

It needs the active support of communities. This, fortunately, is there for the asking. Community law office boards, advocacy groups, service agencies, and others are all available and ready to contribute.

It should have the active support of the legal profession. It is hoped and expected that the profession will respond positively and creatively, recognizing that its principal concerns have been understood and addressed.

It must also have the active support of government. For too long, legal services have been neglected by the province, which bears considerable responsibility for the present mess. It is time for government to provide strong and positive assistance to the society, as well as a rational framework for financial planning.

Finally, however, the society must assume its statutory leadership responsibilities. It cannot make the necessary changes alone. But it must make them.

Legal Services Society – Mandate and Legislation

MANDATE

The mandate of the Legal Services Society is to provide legal aid services to those who are poor and disadvantaged and to provide information, education and advice about law to all people in the province.

LEGISLATION

The Legal Services Society was created by statute in 1979. Section 3 of the act spells out the objects of the society as follows:

3.(1) The objects of the society are to ensure that

(a) services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons; and

(b) education, advice and information about law are provided for the people of British Columbia.

(2) The society shall ensure for the purposes of subsection (1) (a), that legal services are available for a qualifying individual who

(a) is a defendant in criminal proceedings that could lead to his imprisonment;

(b) may be imprisoned or confined through civil proceedings;

(c) is or may be a party to a proceeding respecting a domestic dispute that affects his physical or mental safety or health or that of his children; or

(d) has a legal problem that threatens

(i) his family's physical or mental safety or health;

(ii) his ability to feed, clothe and provide shelter for himself and his dependents; or

(iii) his livelihood.

The mandate and responsibilities of the society have been further defined over the years:

- the courts have confirmed rights to counsel in criminal and immigration/refugee proceedings, regardless of the policies or finances of the society;

- the federal *Young Offenders' Act* provides a right to counsel which, in its administration, often results in legal aid representation regardless of family income; and
- the society has agreed to administer a tariff for providing counsel to persons proceeding with a complaint before the British Columbia Human Rights Council.

Discussion

The reference in Section 3(1)(a) to "services ordinarily provided by a lawyer" is unnecessarily restrictive; it does not reflect the present service mix, let alone an appropriate range of services. A more suitable definition of "legal service" is necessary.

Section 3(1)(b) has been largely neglected and the language may need strengthening. The provision of public information serves the public interest, helps to strengthen public support for legal services, and helps the justice system as a whole to operate more effectively. The act should delineate the range of services, such as the provision of information, summary advice, procedural assistance, self-help assistance, and referral to the private bar, which should be available without financial qualification.

It is not clear that Section 3(2) adequately defines the circumstances under which lawyer representation ought to be granted.

Finally, government should consider vesting in the society responsibility for formal client advocacy services respecting all ministries and agencies of the province, in order to assure that such services are provided independently. Where such services are delivered by grant or contract to non-governmental organizations, the province should ensure an adequate standard of qualification, training and legal supervision. At present, no mechanisms outside society and Law Foundation supervision ensure that clients are protected from incompetence. Any increase in government funding of advocacy must be accompanied by measures to protect the public interest.

Recommendations:

1. The act should contain a more inclusive definition of "legal service" and should specify the services, including information, summary advice, self-help assistance and referral, which should be available without financial qualification.
2. The act should assign to the society clear responsibility for the effective planning, management and overall care of public legal services.
3. The act should assign to the society responsibility for lay advocacy services funding, service delivery, legal supervision and training.

INDEPENDENCE AND ACCOUNTABILITY

Responsibility for the society is vested in a board comprised half of appointees of the Lieutenant-Governor in Council and half by the Benchers of the Law Society. The government therefore does not have majority control of the board. In addition, Section 10 reinforces the independence of the society. It provides that "the society has authority to determine the priorities and criteria for the services it or a funded agency provides under this act."

In 1990, the Ministry of Attorney General prepared to ask the legislature for authority to allow greater intervention in the allocation of society funds. This was abandoned. More recently, the financial situation of the society, combined with an apparent decision-making impasse, led ministry officials to consider their options in case of society bankruptcy.

The independence of the society is of critical importance. All clients involved in criminal matters, and most clients involved in family and other civil matters, face interventions by the state, more particularly by provincial government authorities. Political or bureaucratic interference in the provision of legal services is not to be tolerated.

Recommendation:

4. The act should be amended to strengthen the independence of the Legal Services Society; for example by the following:

    s 10. The society has authority to determine the priorities and criteria for the services it or a funded agency provided under this act [and to allocate its funds as it deems most effective to meet its objects].

This section should not deny government the right to request and receive service delivery, financial and other management information at such times and in such formats which it deems appropriate providing that client identities are not disclosed.

Recommendation:

5. Section 10 of the act should be amended to enable government to receive service delivery, financial and other management information, at such times and in such formats as it desires, providing that client identities are not disclosed.

Measures respecting the board of directors proposed in a later section will also increase the independence of the society from government.

At the same time, the independence of the society cannot become an excuse for poor management or inadequate public accountability for its services and funds. Further, the society would benefit from clear bylaws to more clearly establish its rules of governance.

Recommendations:

6. The act should provide that trustees may be appointed by the Attorney General in the case of bankruptcy or the inability or unwillingness of the directors of the society to discharge their duties.
7. The procedural rules of the society should be codified into a set of comprehensive bylaws approved by regulation.

There are indications that the Office of the Ombudsman does not have jurisdiction over the society. This leaves applicants who are rejected for legal aid no accessible means to seek an independent review of its decisions.

Recommendation:

8. The administrative practices of the Legal Services Society should be designated within the jurisdiction of the Office of the Ombudsman.

The review has also received several suggestions that Section 9, dealing with paralegals and courtworkers, should be strengthened. There are presently limited circumstances in which judges are willing to allow them to speak on behalf of clients. Most suggestions arose in communities not served by a large bar and in which the practical choice may be the paralegal, a courtworker or no representation at all.

Recommendation:

9. The rights of paralegals and courtworkers to appear in court in limited circumstances should be reviewed further by the society, the Law Society and the judiciary. The society and courtworker organizations should canvass their staff respecting both in-court roles and perceived needs; the review should include representative paralegals and courtworkers.

CONFLICT OF INTEREST

In late 1991, the chair of the society agreed to recommend persons from the ranks of community law office boards for board appointments, conditional on the willingness of those individuals to resign from their local boards. A conflict of interest was perceived in relation to local boards entering into contracts for service with the society, even though directors act voluntarily.

The former acting executive director, the new executive director and the present chair also raised concerns with the review about possible conflict with respect to tariff services. Reference to conflict also arose during consultation. Do lawyers on the board, and/or their firms, and/or their close relatives receive income through the tariff? Have directors intervened with staff in tariff administration issues?

The society has no conflict policy. There were reports of debates among directors regarding whether such situations constitute conflict of interest, whether disclosure of conflict is required, or whether affected directors should abstain from decisions which could result in personal benefit.

Recommendations:

10. The Legal Services Society should establish a comprehensive policy respecting conflict of interest, covering all facets of the organization and service delivery; provisions respecting board members should be included in bylaws established by regulation. The society should be included in any comprehensive conflict legislation enacted respecting public bodies.
11. The society bylaws should require that any lawyer appointed to the board cease all remunerative work with or through the society while a board member; and that any director of a community or native community law centre appointed to the board step down from that role while a board member. No member of the board should engage in remunerative services with or through the society, except in their capacity as directors, and as provided by regulation.

Leadership Issues

Little else will change until there are significant improvements to the management of the Legal Services Society.

The issues before this review have produced considerable disagreement among the major interests. However, the greatest degree of common ground was found in their views and feelings towards the society board and management.

Positive comments were made by employees of the system, by community boards and by lawyers. However, these invariably praised particular individuals and stood in clear contrast to the general criticisms.

The society board recognized a number of difficulties and, in the fall of 1991, commissioned Deloitte & Touche to conduct a review, which was critical of both the board and management.

We should be cautious about blaming individuals for the problems. A variety of factors combined over time to create a management crisis that may have been inevitable.

The structure that resulted from the 1979 merger of the Legal Services Commission and the Legal Aid Society was something of a "marriage of convenience." It located in the same office, but did not integrate, the headquarters personnel and structures of its predecessors. Branch, community and native community law offices carried on as before. Service delivery was defined as tariff and non-tariff, and the two did not mingle. Little or no attempt was made to integrate programs and functions, which was perhaps just as well, for the potential for serious conflict was very high.

The society had little understanding of how to manage a diverse, decentralized system. Neither the community-based programs, with local financial and supervisory control, nor the branch offices, administered from Vancouver, were satisfied with the support, assistance or direction they received from headquarters.

There was conflict over the society's role in managing services. Significant elements of the bar believed the society's role was only to screen applicants, refer them to the bar and pay the tariff; tariff services themselves were not seen as subject to "management." Branch office staff counsel exercised a high degree of personal discretion in choosing their work. For their part, community and native offices jealously guarded their independence and their right to determine local service priorities.

Quality control and evaluative mechanisms were non-existent. The minimal expectations of community law offices were seldom implemented; the offices themselves requested the opportunity to prepare and submit annual budgets.

There was little supervision of staff lawyers. And quality concerns respecting tariff lawyer services were viewed as solely the concern of the Law Society.

It was the practice of the society to internally promote lawyers into management positions. It was not understood that law school and practice do not, by themselves, bestow management skill. Nor was it recognized that management training was required.

There was steady growth in caseload and annual expenditure but the management structure did not adapt. The needs and scale of the system outgrew its management capabilities.

Over the last two years, managers were increasingly at odds with the board, particularly respecting service delivery issues.

The society also faced growing pressure from an increasingly aggressive criminal tariff bar. Some observers believe the society to be more accountable to this group than to any other.

The society has operated from the beginning in an inadequate fiscal environment. During the period of government spending restraint in 1982/83, serious funding cutbacks were suffered and management attention subsequently was devoted to survival. A "siege mentality" took hold that in some ways never lifted.

Finally, the provision in the act for appointing the board inadequately reflects the perspectives which ought to be at the policy making table. The board has been inadequately reflective of the community at large and of those sectors which supply clients to the system.

Recent appointments to the board by the Law Society (one position) and the province (five positions) alter the dynamics of its deliberations. In addition the society appointed a new executive director in June, 1992 and further senior managers are being recruited at this time.

These new appointments will assist to improve the leadership and management of the society. However, the difficulties are long-standing and deeply ingrained. The new managers will require time for assessment, consultation and planning. Significant change, for the better, will not occur too hastily.

On the other hand, the difficulties facing the society are such that changes must be made. All parts of the system, from society staff to community law offices to tariff lawyers, have vested interests in the status quo. None should be allowed to use the need for planning and consultation, as opportunity to resist or delay needed change.

BOARD OF DIRECTORS

Statutory Provision

The *Legal Services Society Act* now provides for 14 directors. Seven directors, at least two of whom shall not be lawyers, are appointed by the Lieutenant-Governor in Council on the recommendation of the Attorney General. Seven directors, at least two of whom shall not be lawyers, shall be appointed by the Benchers of the Law Society after consultation with the executive of the British Columbia Branch of the Canadian Bar Association. At its first meeting in each fiscal year, the board appoints an executive committee of not more than five directors.

Although not specifically provided by legislation, one of the directors is designated by the Government of Canada as the representative of the Attorney General for Canada, pursuant to a cost-sharing agreement.

Deloitte & Touche Study

The Deloitte & Touche study identified a number of concerns related to the board:

- The role and mandate of the society are unclear.
- There is almost no effective planning; the report calls for a formal strategic planning process focused on client needs.
- Many policy issues remain unresolved; resolvable through the strategic planning process.
- Management feels isolated from the board; the report calls for a defined policy respecting management attendance at board meetings, circulation of minutes to management and possibly staff, and the establishment of board committees.
- The board needs to redefine its role, by concentrating on policy issues and considering a workshop on board/management relations.
- The structure of the board should be changed to include representation of client advocacy and service delivery groups, and independent management experience.
- Board orientation is inadequate; an orientation program and board handbook is recommended.
- Board attendance is a problem; the report proposes that directors should expect to devote a minimum of 100 to 150 hours per year to the society and suggests a written commitment to board functions.

Review Consultations

The following issues were raised in the course of the review consultations.

Community Law Offices

Boards reported strong feelings about their poor relationships with the society board, including: the failure to consult them on major issues; inadequate contact; ignoring issues raised; and inadequate understanding by the board of the role and work of these offices. The composition of the board was blamed for the higher priority given to criminal law as compared to civil and administrative matters.

Community law offices and native community law offices have objected to the perceived primary allegiance of the board to criminal legal aid and only a secondary allegiance to all other services.

They also feel the board must be diversified and more balanced to reflect the community. It is now too lawyer-oriented. The Association of Community Law Offices should be entitled to nominate or make some appointments.

Branch Offices

Branch offices pointed to the lack of leadership provided by the board and to the high percentage of lawyers. It should represent the general public, groups representing client interests and goals, and geographical and cultural interests.

The review also heard comment from both field and management sources suggesting that for the last year the board appeared to view itself as primarily responsible to the private bar and tended to ignore the interests of clients.

Private Bar

Many private lawyers active in legal aid work said that they regarded the society board and senior management as out of touch with their concerns and views, and insensitive to their needs and responding only to pressure.

Options

The review has considered several options for appointing the board of directors.

Option 1. Law Society appoints, as in Ontario and New Brunswick.

> This option works to the extent that legal aid services are deemed to be the preserve of the legal profession. However, for 20 years other interests have also staked out "ownership" claims. They should not be excluded.

Option 2. Government appoints, or appoints great majority.

> This option risks exclusion of an appropriate range of both professional and community interests, and undermines the independence of the society.

Option 3. Tariff services split from other poverty law services.

> This option would assign to the profession responsibility for administering tariff services, with a new organization established to oversee other services. This would return us to the days prior to 1979. It runs contrary to the dominant community perspective favouring local availability of comprehensive, integrated services, or a "one-stop shopping" approach.

Option 4. Allow major interests to appoint board.

> This option provides for the present two appointing authorities, plus the addition of others, with the intent to bring together the significant interests which should be represented in policy and decision making. This option is the one proposed.

Discussion

The Legal Services Society has been well served over the years by many talented and dedicated persons appointed by both government and the Law Society. Individual directors have mostly given diligently and have tried their best to provide services within the constraints of the times.

However, the present structure does not allow for adequate representation of the perspectives and interests which ought to be reflected in policy making and service planning.

From a professional perspective, lawyer appointments should consistently balance criminal, family and civil perspectives. The judiciary should continue to be represented.

From a management perspective, there should be more appointments which bring, as the Deloitte & Touche authors state, "independent management experience," especially experience in the management of effective, large, complex organizations.

From a government perspective, its legitimate concerns, including fiscal concerns, should be recognized. Similarly, the society should offer policy analysis and advice respecting its client constituency to government.

From a service delivery perspective, all those engaged in the delivery of legal services, from private lawyers to community law office boards are entitled to a society board which understands their interests and concerns.

From a client constituency perspective, the board must include the expertise and wisdom of members who represent, or work directly with, the client constituencies, including: native communities; women's centres and transition houses; anti-poverty groups; organizations of persons with disabilities; multicultural service organizations; criminal justice agencies and so on.

The lack of adequate balance and diversity on the board of the society has contributed in no small way to the organizational, policy and leadership problems that have been identified by this review and others. Together with necessary management improvements, improving the structure of the board will contribute to improving the delivery of service to clients.

Furthermore, it is not good enough to expect the existing appointing authorities to make suitable appointments from the other constituencies; those constituencies require a more accountable mechanism.

Recommendations:

12. The act should be amended to provide for the following mechanism to appoint directors:
    - four directors, one of whom shall be the chairperson, appointed by the Lieutenant-Governor in Council, on the recommendation of the Attorney General;
    - three directors appointed by the Law Society, after consultation with the B.C. Branch of the Canadian Bar Association;
    - two directors elected by the boards of community law centres, in accordance with the service delivery structure proposed in this review;
    - two directors elected by the boards of the native community law offices.
13. The chief executive officer of the society, who should not be a voting member of the board, should be appointed by the Lieutenant-Governor in Council on the recommendation of the board of the society.
14. In appointing directors, the appointing authorities should be required to consider: geographic representation; client constituency interests; needed program managment skills; and in appointing lawyers, the areas of law of significant concern to clients.
15. A per diem established by regulation should be payable to directors for time, together with necessary expenses, such as travel and child care.

These recommendations respect the importance of the two traditional appointing authorities. They retain the past practice of giving no one appointing authority a majority, underscoring the co-operative partnership intent. Above all, they ensure that service delivery and community interests join that partnership.

It is also hoped that this approach, together with other recommendations, might help to solve the difficulties now resulting in pressure to split native programs from the society, and contribute to a more positive, constructive relationship.

MANAGEMENT ISSUES

It is distressing that a public agency responsible for services now costing nearly $100 million annually has been become so inadequately managed. It is equally distressing to see this system fall so short of its potential for effective service.

It is necessary to underscore the breadth and seriousness of the management issues by reviewing them in some detail. The following three sources are summarized, with comment:

- report of the fieldworker consultations with community law offices;
- consultations by this review with society staff, funded agencies and members of the legal profession; and
- the Deloitte & Touche study commissioned by the society board of directors.

Community Law Offices

In the fall of 1991, society fieldworkers visited the staff and boards of the community law offices. They asked for advice respecting the relationship between the offices and the society, their expectations of field staff and a variety of other concerns. The following is a summary of their comments:

> Offices criticized infrequent and pointless fieldworker visits; the lack of clarity of the fieldworker role; the lack of a process for annual reporting, contract negotiation and budget allocation; lack of involvement in service planning and evaluation; and inadequate funding levels.
>
> They reported a variety of tariff management concerns, including: shortages of lawyers; lack of feedback regarding lawyers' billings or service quality; duty counsel problems; and inadequate secretarial time due to tariff volumes.

> They criticized lack of input into salary and benefit decisions; the way pension plan decisions were made, especially the inclusion of their staff a full year after society staff became eligible; and perceived inequities between their employees and society staff.

The review consultations with community law offices produced similar comments:

> Management provides no priority setting, no firm leadership; we decide ourselves how the lawyers spend their time; no one above the local office level looks at service priorities; no outside aspect of the community has an impact on the society.
>
> There's a very centralized, massive bureaucracy in Vancouver; at the same time, we don't spend a lot of time accounting to headquarters; the Law Foundation requires more accountability than the society.
>
> There are serious structural problems; there are Legal Services Society branch offices, community law offices, and native offices and nobody seems to know how they all fit.
>
> Many society policies are driven by the needs of Vancouver and may not work for other locations; do not approach service development with a Vancouver-focused, centralized, bureaucratic approach.
>
> The society gives local offices no control over service quality; give us control of how funds are allocated, including the tariff, and let us weed out abuse.
>
> Clarify what statistics Legal Services Society needs; improve collection system; don't collect what they can't use; the reporting system does not capture all the work; change the form; ensure standardized reports.
>
> Recognize our administrative workload and provide the necessary resources; the formula used to assess staffing needs is problematic.
>
> Stability at headquarters would be nice.

The community law offices also pointed out that they have been raising these same concerns for many years at their annual board consultation with the society, without noticeable change. Several also had mixed feelings about the fieldworkers needing to ask, in part, what the offices thought the fieldworker role should be, some 12 years after the society's creation.

Native Community Law Offices

It has not been possible to provide the necessary time and care to issues respecting the Native Programs Branch and the native community law offices to this point; it is intended that they be examined later. However, on the basis of limited opportunity to meet some staff and board members from these offices, it seems clear that they too have serious concerns respecting their relationships with the Legal Services Society.

Branch Offices

The review consultations found similar criticisms of society management from its own branch office staff:

> The society headquarters and board are seen as being in disarray, and the society out of tune; some staff say they have been told what's been happening over the last year, others that they have not been kept informed; all agree that they have inadequate opportunity for input; they believe the society needs a better sense of community needs and resources and should consult with both professional and support staff about how to run local operations more effectively. While management skills were criticized, credit was given by some to management for "having the right focus" in their commitment to legal services.
>
> Over the last year, management encouraged branches to undertake a planning process, which was reported as positive. However, the staff continue to feel very isolated and not well supported. One lawyer reports asking for a job evaluation after the first year; headquarters simply assumed the lawyer was "bushed." They report no job descriptions for staff lawyers. Some report inadequate guidance on how offices should be organized. Staff lawyers express a desire for more fieldworkers, and for senior counsel to consult with. However, some feel fieldworkers are perceived to have insufficient legal aid experience and therefore may not appreciate the work or their working environment.
>
> Staff lawyers are critical of the lack of autonomy and even information respecting branch office budgets and expenditure; a number expressed serious concern at their inability to effectively monitor tariff services when they are prohibited, as they understand it, from doing criminal and family court work.
>
> Most feel that with greater local autonomy, they could be more community-based in their approach to service delivery; some feel branch offices should be treated the same as community law offices.
>
> Local office management was of concern to several, identifying either the need to be trained as managers or the need for office managers who are not lawyers. Concern was expressed regarding clerical classification matters; the review was also told that staff lawyers in branch offices do not have supervisory control over support staff, but that this authority, including handling of step one grievances, lies with the fieldworkers.

Legal Profession Comments

Lawyers who deal with the Legal Services Society through the legal aid tariff were also critical of society management:

> The society is perceived by many to have become a huge and difficult bureaucracy which cannot produce a straight or a quick answer; some complain it is never possible to even get through to people on the phone. Some feel it doesn't consult; that issues raised are not addressed; that nobody's in charge; and that nobody appears to care.
>
> Several lawyers suggested that if society managers were more sensitive to the bar, and kept the bar more informed, better relations would result. One suggested that the unionized staff lawyers find it hard to relate to and deal with private practitioners.
>
> Regarding incorrect billings: different decisions by Legal Services Society are reported on the same issue.
>
> Several suggested looking to administrative efficiencies as a way to save money.
>
> All comment was not negative: the tariff office was reported as doing an excellent job in the last year in following through on requests and processing paper.
>
> One lawyer observed that since so many clients are aboriginal, perhaps Legal Services Society should have affirmative action hiring.

Deloitte & Touche Study

In November 1991, the board of directors retained management consultants Deloitte & Touche to conduct a management review of the society. They reported in January 1992.

The entire report was not publicly released; however, the executive summary of recommendations was circulated and portions of the report were made available for this review. No material respecting individual managers was provided to the review, nor was any such material requested.

The following is a brief summary of the report:

- Is management competent and able to provide needed leadership?

  The society has been poorly led at the senior level and management is generally weak; leadership for the future cannot be provided by the current management; there is an urgent need for new and strong management.

- Is the organization structure appropriate?

  The organization requires restructuring; a deputy executive director position is required; and increased emphasis is required on tariff management, human resources management, evaluation of services, audit and investigations and logistics.

- Are there sound processes in place for planning, monitoring service quality, managing operational quality and efficiency, fiscal control and people management and development?

  The necessary management processes do not exist. As a result the organization is not under control and is vulnerable to something seriously going wrong.

The consultant made the following recommendations (those dealing specifically with the board are addressed earlier):

Deloitte & Touche Recommendations

High Priority

- clarify and communicate the role and mandate of the society;
- establish a formal strategic planning process focused on client needs;
- resolve the many outstanding policy questions through the strategic planning process;
- recruit a new executive director with outstanding management skills;
- appoint a deputy executive director to manage all client service functions;
- establish a tariff management department responsible for co-ordinating all aspects of tariff service delivery;
- develop a defined approach to tariff management, including day-to-day activity, use of statistical analysis and the role of audit/ investigations; and
- make human resources a full department and hire an experienced professional as director.

Medium/High Priority

- review available alternatives for service delivery to native people, leading towards a decision;
- establish job descriptions with responsibility and authority defined;
- develop a responsibility and authority matrix for the organization;
- review funding activities and establish clear guidelines;

- assign to the director of human resources responsibility for labour relations;
- establish a management rotation program on a three to five year cycle;
- head office managers and client services staff should serve six months as staff lawyers on a regular basis;
- define the authority and responsibility of client services staff; the results, not operational details, of field offices should be managed; and
- review the mandate and objectives of native programs to determine if the focus should be on core services or larger native issues.

Medium Priority

- a qualified accountant should be hired as comptroller;
- introduce a performance management system, first to managers, then to staff;
- add an experienced training professional to the staff;
- management training should be established as an essential part of career development;
- additional management positions should be added;
- poor performance by staff should be dealt with;
- workloads and backlog should be monitored when the organization has "settled down;"
- when considering the type, location and staffing of offices, examine to see if one model would be appropriate; develop criteria for offices based on need; and
- examine whether attaching native lawyers and paralegals to regular offices would provide greater consistency of service.

Medium/Low Priority

- review all time off and related benefit policies; realistic policies should be implemented; abuses should be identified and dealt with; and
- in order to make internal promotion effective, recognize management skills in performance reviews; management skills should be considered as the most important criteria in promotion or hiring for management positions.

This review finds little to quarrel with in many of these findings and proposals. Two reservations with the report are first, that the consultants did not conduct a full review of local services, nor did they examine service delivery models and structures. Therefore, some of the recommendations may require adaptation or review in light of the outcome of the review. Second, while the report correctly identifies the existence of difficulties respecting native programs, the observations and recommendations require more extensive review and consultation.

Recommendation:

16. The general direction of the Deloitte & Touche recommendations is endorsed. Those recommendations which are consistent with this review should be adopted at the earliest opportunity. Other proposals may require reassessment in light of this review and further consultations regarding native programs.

Morale

Staff morale at Legal Services Society headquarters has been very poor. There have been serious conflicts between management and the board of directors, particularly in the last six months. There has been a lack of leadership, partially due to the lengthy period of time there was an acting executive director. Funding uncertainties also contributed to the difficulties. Some managers fear that the Deloitte & Touche report alleges incompetence on the part of particular staff who have not been so informed. A number of senior managers have left, both voluntarily and otherwise. The management establishment is presently understaffed.

In general, morale difficulties did not extend into the local offices to any great degree, although effects on the Gastown office were noticeable. The offices mostly distanced themselves from the headquarters difficulties; their ease in doing so only reinforces their claim that headquarters is isolated from the concerns of the field.

Appeals Department Problems

Minimal information was volunteered by the society regarding this issue. In 1991, it was discovered that a large number of appeal applications were accumulating in a desk drawer, unattended. The review was advised that: the incident resulted in the replacement of an employee and a contract lawyer; there may have been uncertainty about who, if anybody, was responsible to supervise and monitor the administrative employee's work; the workload of the employee involved was alleged to have been excessive, which was signalled to management; the incident contributed to mistrust and soured relationships between board and management; and that the incident contributed to the decision of the society to request the Deloitte & Touche study. It is not known whether the appeals of any clients of the society were jeopardized as a result of this incident.

Management Recruiting

Since the completion of the Deloitte & Touche review, there were a number of dismissals and resignations from management ranks. An acting executive director was in place until early June 1992, when the new executive director commenced work; the society has subsequently commenced the recruitment of additional senior managers. It will be some time before the society achieves full management strength.

Role of Executive Director

Given the difficulties of the society over the last year, it is important that the board vests adequate authority in the executive director, and backs the executive director's decisions. It is essential that there be clarity regarding the roles of the board and of the executive director, and that the authority of the latter not be undermined.

An initial task of the executive director will be to carefully assess the immediate organizational and management needs of the society, and to address them. This will not be a painless process and the executive director must be able to count on the support of the board.

Senior Management

While the need to put a management team in place quickly is recognized, a concern should be registered that these appointments be made with an eye to the service delivery and structural changes that will be necessary in the coming months. They have implications for the roles of headquarters staff and therefore some of the skills and experience required.

Particular attention should be paid to the service delivery framework identified in this review; to management of a decentralized service system; to the role of information and education services as integral parts of core service delivery; to the supervision, support and training needs of local offices; to the extension of community boards throughout the system; and to an increased role for local offices in monitoring service quality.

Information and Education Services

The society has at its disposal a tremendous pool of skill and experience, through the local offices and the private bar. However, all those involved in service delivery would benefit from better legal information sharing and networking. The legal resource centre and information/education staff need to be better connected with the mainstream service system and included more directly in client services management and service planning.

Recommendation:

17. The society should involve more directly the education, information and legal resource staff in client service planning and management, and should consult with local offices respecting their information, education and legal resource needs.

System Productivity

Management information does not usefully exist in a vacuum, nor is it an end in itself. It is not linear or one directional, but is part of a decision-making cycle. If a management information system is to be useful and appreciated, it must both receive complete information from local offices and return helpful information back to local offices, and do both in a timely manner. The present system fails on all counts.

Ironically, the society data base is reputed to be the most thorough of any legal aid jurisdiction in Canada. It is therefore even more distressing to discover how little it has been used.

The complexity of the information system was demonstrated during this review by the continuing difficulty of ensuring that the available data was consistent on a year-to-year basis. Those unfamiliar with the detailed format of the reports could be seriously misled.

The society must come to terms with the question of productivity. The term is not obscene. Productivity measures include service quality and are not antagonistic to it. Productivity tests must be applied to tariff and staff-delivered services alike.

It has been accepted that tariff services are efficient and effective, with little or no testing of this. There is little agreement regarding such basic matters as the caseload that can be handled annually by a tariff lawyer specializing in legal aid referrals or the volume of legal aid work at which quality is likely to suffer.

Community law offices have had little supervision. They regard themselves as hardworking and generally understaffed. They guard carefully their right to set local service priorities. There are no processes in place to evaluate community responsiveness, workload volumes or service effectiveness. Caseload data indicate widely varying reported volumes. Those offices which administer the tariff have no role in monitoring those services.

Branch offices have been encouraged to become more active in providing civil and administrative law services. They have also been encouraged to develop annual office plans, but receive little direction or assistance. They have no role in managing or monitoring tariff services, aside from intake and referral. While they provide numerous examples of interesting and useful work, these offices carry widely differing workloads and many seem to lack focus. Here, too, there are no processes for service evaluation.

The data system clearly does not capture the full workload of the staffed services. It does not, for example, record short services, especially summary information provided by telephone; nor does it include public legal education, information services, assistance to lay advocacy groups or work in support of community and justice development. Civil non-tariff caseload data are also suspect, since there are no billing incentives to submit worksheets consistently or on time. It is also clear that most offices have not taken kindly to the paper demands of headquarters, given little sign the data is ever used. Many offices maintain separate statistics for internal use because of inconsistency and delay in receiving information from Vancouver.

Those who attacked the ministry report which costed a staff system, focused in part on the viability of the data. Whatever other shortcomings that document may have had, the criminal and family caseload information and related financial data, came from the Legal Services Society and was based on billings forms submitted under the tariff.

The review has heard a number of calls for additional detailed study of services prior to any decisions being made about service delivery alternatives. The need for improved data collection and analysis is undisputed. However, a greater need is for its consistent use by the society in planning and assessing service delivery.

Recommendations:

18. The society, in co-operation with all local offices, should review its management information needs and ensure that adequate and timely information is available to those who need it. All work should be reported. The society's data system should be a primary tool for service evaluation and planning. Information should be consistently tracked and reported in a format that is both complete and understandable. Workload data should be publicly available as a matter of routine.
19. The society, in consultation with local offices and the bar, should develop measures of service productivity which allow for the appropriate assessment and comparison of all aspects of service delivery.
20. The society, in consultation with local process offices and the bar, should design an ongoing service evaluation with provision for both data analysis and more subjective measures, such as community needs for service, service responsiveness to need, accessibility, and quality, and provide opportunity for public reporting and input.
21. The society should ensure adequate staffing for planning, policy analysis and development, evaluation, data analysis and distribution,

and research, including provision of information, analysis and advice to local offices.

Delegation of Authority and Responsibility

The society functions in an illogical fashion with respect to the vesting of decision making in head office or at the local level. For example, branch offices not only do not have budgets. They normally do not know how much is spent on their offices or on the tariff in their areas. The community-based services have budgets and spending responsibilities for their own offices, but do not receive tariff expenditure information.

Authority is also delegated differently. For example, staff counsel in community or native community law offices do not have the same tariff administration authority as lawyers in branch offices. Finally, each area director and office reports directly to headquarters.

As a consequence, no local authority exists for the overall management of services or budgets.

Recommendations:

22. The society should assign all staffed offices equal authority for tariff administration matters.
23. The society should ensure that each office has a defined area of service, most often defined geographically; that each has an annual operating budget covering all aspects of service delivery, including tariff services and area director services within the service area; that spending authority for that budget is decentralized to local offices; and that local offices be regularly provided with financial information on spending patterns for all services.

Personnel Management and Labour Relations

The present staffed services, including branch offices, community law offices and native community law offices, are partly unionized. Three different unions represent unionized employees. The Legal Services Society controls wage and benefit levels for all parts of the system through its contract policies with community and native community law offices. Some of these agencies have called for greater consistency with the society's own employees; others have called for increased autonomy, including global funding and the exclusive right to set wage and benefit levels.

While supervisory responsibilities are fairly clear in the funded agencies, they seem inadequate in branch offices. Fieldworkers and other head office personnel are directly involved in local supervision issues, including settling local office conflicts and responding to grievances at the first step.

Employees within the system report that career movement between the society, community law offices and native community law offices has not been easy. There are a number of different employers, with considerably different collective agreements and personnel policies. There is merit to co-operative measures which at least do not penalize employees from moving within the system as a whole.

Recommendations:

24. Effective staff supervision processes must be instituted in all local offices, along with appropriate responsibility and authority, including responsibility for handling grievances. Supervisory staff must be appropriately trained. A supervision strategy must deal with both control issues, which ensure that suitable policies and procedures are enacted and followed, and developmental issues, which support the optimal use of the talent and potential of staff in service delivery.
25. The Legal Services Society should maintain control of the wage and benefit grid for the entire system, including all local offices, to ensure equitable working conditions for all those employed within it.
26. The society should enter discussions with the affected organizations and unions to achieve wage and benefit consistency throughout the entire system, and to facilitate recognition of seniority and ease of movement throughout the system.

Training

The society training officer received high praise throughout the system. Ongoing training programs for lawyers, paralegals and support staff are generally well regarded. The primary concern is simply that there are not enough.

There were several suggestions that additional staff training in tariff administration would be in order, noting that there are a number of support staff in the system who could likely lead the sessions.

The service delivery proposals contained in this review will necessitate an expansion of staff training services and additional staff will be required.

The management training requirements identified in the Deloitte & Touche report are underscored. Supervisory training in the branch offices is also an important need.

Several private practitioners commented that Continuing Legal Education offerings often had limited value for poverty law practice. The society is one of the few agencies with this capacity.

Several concerns were expressed regarding the qualifications and training of lay advocates engaged in quasi-legal work with community-based agencies.

Recommendations:

27. The society should undertake a review of training requirements, and should recruit additional training staff.
28. Staff training needs should be incorporated into service planning.
29. The society should consult with the tariff bar regarding offering training and workshop opportunities for lawyers engaged in tariff or other poverty law work, on a cost recovery basis.
30. The society should design and implement a plan to extend training and legal supervision resources to lay advocates of community-based organizations.

Future Directions

Where does the society look for advice and models? Considerable criticism comes from lawyers who are sole practitioners or members of relatively small firms, and from small community-based organizations. Yet the society is by far the largest purchaser and provider of legal services in the province; it needs to look to other large-scale services in the public, private and non-profit sectors.

For example, there could be value in looking to emerging trends in very large law firms methods of dealing with larger corporate clients for ways of managing services. For example, one member of a large Vancouver firm commented that:

> The climate is increasingly competitive, with the need to market the firm to get and hold clients. The in-house counsel of corporate clients are increasingly demanding of outside firms, looking for cost competition, value for money, and occasionally requiring estimates and formal proposals. There is an increasing sense that those buying the service will control the service. There is a more multi-disciplinary environment, with less clear distinctions between the roles of lawyers, accountants, engineers and management consultants.

These patterns have a certain resonance in legal aid services. Some of the lessons of the non-profit sector, for example respecting flexible, adaptable structures, may also be of use. And there are certainly other models: the changes being contemplated in the health system come rather obviously to mind.

The society should look outside its own field, and outside the legal profession, for example and inspiration in addressing its own needs.

The society board has made efforts to identify and deal with its management difficulties. However, the scope of the problems is daunting. This situation did not develop overnight; it has been a long time in the making.

It is fortunate that the management crisis has had such a minimal impact on field offices throughout the province. At least day-to-day service has been maintained.

It is also fortunate that those working in the field offices, and in headquarters, are looking to the society for leadership, for change, and for help in improving services. The board and management must listen carefully to, and learn from, the field in planning a new direction.

LEGAL AID LAWYERS' STRIKE, 1991

Growing dissatisfaction with the level of the legal aid tariff among private bar lawyers led to the creation of the Legal Aid Action Committee (predecessor of the Association of Legal-aid Lawyers of B.C.), which organized a withdrawal of services in all but emergency cases as of April 15, 1991.

By late April, the Legal Services Society was experiencing considerable difficulty with case referrals. Of 36 locations, 14 could refer urgent cases only, while a further 10 experienced significant impact. It should be noted that seven of these locations had difficulty placing cases before the strike. Other reports suggested that while there was very strong support for the strike among the Vancouver defense bar, support was mixed throughout the rest of the province.

The board of directors of the Legal Services Society responded by adopting a policy that the matters of tariff levels and tariff funding were better settled between the government and the profession. On the face of it, there may have been a certain logic to this position: the tariff consumed about 80% of the society's budget, and increases would require additional funding. Nevertheless, this decision is in conflict with its statutory mandate respecting the delivery of legal aid services and with its previous practice.

Society management supported a higher tariff, but did not support doubling it; they also identified a number of other equally pressing financial needs. Similarly, ministry officials opposed the level demanded by the defense bar, although they did support a substantial increase.

Following direct discussion between the legal profession and the government, the province increased its allocation to the society by an additional $6 million. The Law Foundation also made a one-time only contribution of $6 million. The strike was then settled by the decision of the society to double the tariff schedules; no other possible uses for any of the funds were considered.

Treasury Board approval of the additional funding was conditional on the Ministry of Attorney General reviewing alternative methods of delivering legal aid services and reporting back with recommendations by November 1, 1991, leading to the so-called Public Defender Study.

The financial impact of the settlement on the subsequent year was dramatic. At a time when many ministries and agencies were having budgets frozen or reduced, the voted allocation for 1992/1993 was more than double that of a year earlier. Even this was insufficient to meet projected rates of expenditure and government was accused of "cutting back" on legal aid. Because cost-sharing agreements for legal aid services are among those capped by the federal government, the province has absorbed the full financial impact of these increases.

This incident raises a number of questions, which may be posed to government, the Legal Services Society and the legal profession. They remain useful as the various parties ponder future decisions respecting legal services.

For Government

- Did government know how the new tariff levels would compare to private legal fees?
- Did government understand that both society management and ministry officials believed that the strike could be settled for substantially less than what was settled?
- What attention was paid to the financial impact of the settlement, given the amount of the increase, the one-time Law Foundation contribution, the capping of cost-shared programs, and predicted case volume increases?
- The stage was set for further conflict by connecting the funding increase to an examination of service delivery alternatives. If less expensive alternatives were believed to exist, why agree to doubling the tariff?
- What attention was paid to the impact of the settlement on remuneration rates for other lawyers working in, or paid by, the public sector?
- Why, despite the statutory responsibility and authority vested in the society for service prioritizing and delivery, did government appear willing to tie funding adjustments to particular elements of the service?

For the Legal Services Society

- The reticence of the society to assert its statutory rights and responsibilities during this dispute is in marked contrast to 1990, when it voiced alarm at the intent of government (though not pursued) to restrict its discretion over the allocation of resources. Did it not consider that standing aside in this dispute might be a abdication of responsibility, and perhaps a dangerous precedent?

- Did the society consider that doubling the tariff without attention to other critical needs might make their resolution even more difficult?

For the Legal Profession

- Did the bar consider that the position of the society (that the tariff fight was with the government directly) undermined the independence of the society?
- Did it consider that perhaps such a large infusion of new public funds should have been applied carefully and equitably throughout the entire legal services system?
- Did it consider the potential consequences of a group of independent professionals beginning to behave as unionized employees?

Discussion

The tariff was inadequate and should have been increased.

However, other needs within the legal services system were just as critical. They include the inequity between family and criminal tariffs, the shortage of family law lawyers in most communities, the lack of staffed services in many areas and the under-staffing of existing offices, the inadequacy of administrative and civil poverty law services, and the inadequacy of services to native people. Virtually no progress has been made on these matters.

Worse, the funds available for all non-tariff services remained virtually constant, with the result that they now account for about one-half the share of the previous year's total budget. Addressing non-tariff services has become financially more difficult given the present rates of expenditure increase.

The apparent silence of the Legal Services Society left many of those involved with non-tariff services questioning the competence and the motivation of its board; a number of people described the society as being "hijacked by the criminal bar."

The policy framework of government in dealing with legal services has seemed erratic at best. Its response on this occasion was no different, save for its breathtaking scale.

It is difficult to imagine a settlement more likely to create even larger, long-term, structural difficulties. British Columbia was no closer to a rational, thoughtful assessment of needs and service options than before; but interests would be inevitably more entrenched and remedies more expensive.

Finally, it was difficult, if not impossible in all of this, to know who was looking to the public interest.

THE ASSOCIATION OF LEGAL-AID LAWYERS

The Association of Legal-aid Lawyers was established following the 1991 legal aid strike by members of the private bar. It was formed to represent the interests of lawyers who provide services on the legal aid tariff.

The association has defined its purposes as:

- to promote quality legal representation for those who cannot afford to pay for legal services;
- to promote recognition by government, professional groups and associations, and the public of the essential role of legal aid in the administration of justice; and
- to represent the interests of the lawyers of British Columbia who provide legal aid services.

As of January 1992, the association claimed to "represent the overwhelming majority of legal aid lawyers in this province" with about 400 paid members.

The Association of Legal-aid Lawyers believes that the present system of delivering legal aid services through private counsel best assures quality service to clients and maintains the client's choice of counsel. It opposes the implementation of a staffed system.

Its position on tariff levels, as stated February 24, 1992, is that "the recommendations for tariff funding specified in the Hughes Report should be met. The 100% increase in tariff rates (in 1991) falls short of that target. A further 25% increase is required to meet the Hughes targets."

The association has urged that enhancement of family legal aid is required, but that staff delivery is inappropriate. Staff proposals are perceived to "presume that lawyers in clinics should and will spend fewer hours per client. Further, they assume that choice of counsel is a luxury that legal aid clients cannot afford."

The association similarly opposes an immigration clinic, asserting that private practitioners have the expertise, dedication and grasp of clients' needs. Also, the association: rejects Legal Services Society projections of cost savings in translation/interpretation services; claims that a proposed central resource centre duplicates one provided by the Immigration and Refugee Board, as well as informal national fax networks; and questions cost savings in lawyers fees.

In the course of this review, several meetings were held with representatives of the association, including detailed discussion of criminal, family and immigration services, as well as a variety of concerns respecting the administration of legal aid services. A desire to contribute positively to the development of measures which will maintain high quality tariff services and reduce abuse was indicated.

The association also understands that the Legal Services Society has recognized it as the legitimate tariff bargaining agent on behalf of lawyers accepting legal aid referrals. The former acting executive director indicates that while this matter was indeed discussed by the society directors, no formal decision was made. The society should clarify this matter.

There is no inherent objection seen to recognition of the association as the agent for bargaining tariff levels. It would, however, require other parties, including the appointing authorities to the society, to resist any temptation to meddle or intervene.

With respect to tariff administration, other service delivery matters and broad policy development, the association should expect to participate and to be consulted, in the same manner as other professional and community interests.

The emergence of this organized voice should be regarded as a positive development. It provides a representative vehicle through which the particular issues of the tariff bar can be addressed. It also frees the other organizations of the bar, especially the Law Society and the Canadian Bar Association (B.C. Branch), to maintain an overview and more reflective stance towards legal aid issues, and to worry less about providing a voice for these practitioners.

THE ASSOCIATION OF COMMUNITY LAW OFFICES

The Association of Community Law Offices was created in early 1992 by the boards of the community law offices. It provides a forum to discuss issues of mutual concern, and an advocacy voice to the Legal Services Society, government and others.

The association has advised the Legal Services Society of the following policy positions:

- The funding increases provided to the Legal Services Society during the last two years "must be used to improve and broaden services to clients. We do not support the use of these additional funds simply to pay for a more expensive delivery of current services."
- "Any decision on the tariff and possible mixed model delivery systems of legal aid must not be made in isolation. Any decisions relating to the modification of the existing legal services must be made only after an

examination of all the legal services provided by Legal Services Society, including all poverty law services."

- ". . . an examination of the definition of 'core services' in the legal aid and poverty law areas must be undertaken immediately as part of any restructuring of the delivery of legal services . . . ."
- the association expects "to be included in all future discussions involving the government, Legal Services Society and the bar so that the issue of poverty law services can be included in all discussions and proposals."

The association has recently surveyed its member organizations, and reports strong dissatisfaction with the Legal Services Society's poor support for poverty law services:

> A significant majority say that the (Legal Services Society) budget increases did not improve the delivery of legal services to clients in the areas of poverty law (91%), immigration law (77%), criminal law (60%), or the staffing of new offices (72%); 40% saw no improvement in family law while another 50% saw little improvement.
>
> All offices report large volume increases over the last three years; only 9% report that staffing increases have kept pace; most describe their staffing needs as urgent.
>
> The vast majority (91%) view the priority given to poverty law by Legal Services Society as unsatisfactory.
>
> The same majority believe that any future staff delivered services should be attached to existing offices to achieve a proper integration of services. A reduction to the criminal law tariff was their first choice of options for reducing legal aid costs; 88% listed a reduction to the immigration tariff as their second choice.
>
> The community law offices report an inadequate working relationship with the Legal Services Society: 91% say that Legal Services Society support services are not clearly defined; 27% that those services are adequate; 91% that eligibility guidelines are not consistently applied; 100% that they have insufficient input into Legal Services Society policy development; and 100% that the Legal Services Society board appointment process must be changed (with 91% advocating a Community Law Office voice in appointments).

The association has submitted correspondence to the review, and participated in a consultation.

The Legal Services Society recently agreed to provide the association with operating costs and to make available a society fieldworker (0.6 full time equivalent) for its work.

The association and its constituent boards should be acknowledged by the Legal Services Society as a key interest, and should ensure its full participation in service and organizational planning.

LIAISON AND CONSULTATION

There appears to be only one formal liaison committee throughout the entire system, the Legal Aid Liaison Committee, comprising representatives of the Legal Services Society, the Law Society, the Canadian Bar Association (B.C. Branch) – Criminal and Family Sub-Sections, and the Association of Legal-aid Lawyers. The bar sees it as an important vehicle to ensure its concerns are discussed.

Committees also exist to negotiate the operating detail of the criminal and family legal aid tariffs, with mixed success.

Members of the profession expressed strong concern that the society did not consult sufficiently and paid little attention to their needs and views.

Other interests are equally unhappy. No mechanisms exist to ensure ongoing advice from local offices, client constituency groups, or other parts of the justice system.

The headquarters of the society is perceived as out of touch with field operations. Branch office staff and community law offices alike commented on their sense of isolation from headquarters, the difficulties they encounter in seeking direction or support and their lack of voice in decision making.

Community groups and agencies who actively refer clients to the society could be an invaluable source of advice and assistance; yet, they have not been cultivated as effective networks for client services policy development. Nor has the society utilized community interests to promote public support for legal services.

The Public Legal Education and Information unit has utilized its small grants program to develop an effective information network among the organizations it funds, resulting in an impact far in excess of the monies spent. Unfortunately, it is not closely involved in client services policy development, service planning or management and has limited effect on field operations.

Recommendations:

31. **The society should immediately establish effective, ongoing, multidisciplinary consultation processes with community and professional interests. It should also directly involve local office boards and staff, and the various specialist sectors of the legal profession.**

32. The society should formally recognize the Association of Community Law Offices, and the parallel association of native community law office boards if established, as formal liaison structures and consult with them as it does with the legal profession through the Legal Aid Liaison Committee.
33. The society should establish effective, ongoing consultative relationships with groups and agencies which could assist in client service planning, including multicultural service agencies, aboriginal organizations, mental health advocacy groups, anti-poverty groups, organizations of the disabled, women's groups, among others.
34. The society's consultation process should include opportunities for interactive discussion among the various interests in environments which are non-confrontational.

RELATIONSHIPS WITH GOVERNMENT

The society and government should ensure improved working relationships and consultation in the immediate and foreseeable future.

The society must ensure that detailed, accurate information is provided to government on an ongoing basis respecting its financial position and the service changes it must make. Both must work with information they trust. It is not in the interest of the society to be secretive. It should indicate willingness to work with government in resolving the present difficulties.

Government must assist the society to resolve both the service delivery and the financial issues, while acting in ways which respect the independence of the society.

Government, especially Treasury Board, must recognize that some of the budgetary needs of the society are demand-driven. There are court-mandated services which limit flexibility. Suitable provision ought to be made in annual budget planning for caseload fluctuations, in order to minimize the likelihood of deficits.

The review is concerned by the habit of the society and government looking to the Law Foundation for contributions to deal with short-term funding needs. This practise distorts government funding baselines, and may allow a degree of manipulation to lever funding increases from government. It is also arguable that there are better ways for the Law Foundation to usefully support the development of public legal services.

Recommendation:

35. The province and the society should develop a mechanism to account for demand-driven and uncontrollable volume increases, and these increases should be reflected in budget baselines, provided the society can demonstrate to Treasury Board that it is managing all its services in an effective manner.

Service Delivery Management

STRUCTURE AND ADMINISTRATION

There are five components of the service delivery and administrative system:

- Legal Services Society headquarters programs (Public Legal Education and Information Services, Schools Program, Native Programs, Resource Centre, Brydges Program) and administration, including centralized tariff administration; an audit unit will commence in August 1992.
- Branch offices administer tariff client eligibility and referral, undertake a variety of casework, largely in civil areas, with some education focus. These offices are located in: Burnaby; Fort St. John; Nanaimo; Surrey; Campbell River; Kamloops; Nelson; Vancouver (Gastown); Chilliwack; Kelowna; Prince George; Williams Lake; Dawson Creek; Prince Rupert and the Prison Project in Abbotsford. (Langley is included for data purposes, even though it is funded exclusively by the Law Foundation and considers itself a community law office.)
- Community law offices are funded agencies and independent societies which provide services by contract. Some operate as exclusively legal services while others are part of larger community service agencies. Most do tariff eligibility and referral. Their staff concentrate on civil and family work, with some education and community/justice development. Their offices are located in: Abbotsford; Maple Ridge; Penticton; Victoria (although its staff are employees of Legal Services Society and the UVIC Faculty of Law); Cranbrook (although the contract is through the tribal council); New Westminster; North Shore (paralegal position only); Powell River; Quesnel; and Nanaimo.
- Native community law offices are funded agencies, either through friendship centres or exclusively legal services organizations. Some do tariff eligibility and referral. Staff engage in civil and family casework and devote considerable attention to community/justice development and education. They also provide some legal support to aboriginal issues. Their offices are located in: Burns Lake; Merritt; Skidegate; Hazelton; Port Alberni; Massett; Prince George; Terrace; Fort St. John; Fort St. James; Fort Nelson; and Smithers.
- Area directors are lawyers in private practice who contract to take eligibility applications and make private bar referrals. They are located in: Chetwynd; Duncan; Kaslo; Parksville; Salmon Arm; Squamish; Golden; Ladysmith; Nakusp; Revelstoke; Sechelt; Ucluelet; Invermere; Lillooet; North Vancouver; Richmond; Vernon; Sparwood; Port Alberni; and Armstrong.

Service Delivery

Criminal legal aid, including duty counsel and service for youths charged under the *Young Offenders Act*, is provided primarily by lawyers in private practice who are paid a fee for their services. The fee is paid according to a tariff set by the Legal Services Society in consultation with the profession.

Family legal aid is also provided primarily by private lawyers on a tariff, as is legal aid representation in immigration matters.

Civil and administrative poverty law services are provided by paralegals and lawyers employed by branch offices, community law offices and native community law offices. The private bar is involved with this work on a very limited pro bono basis. No tariff is available, although limited disbursement support is provided.

Public legal information and education services are provided through the staffed offices. In addition, the society makes limited grants available to other community-based agencies and to public libraries to assist in public information and education. Other agencies and the legal profession, separate from the Legal Services Society, also share responsibilities in this area. The society operates a Legal Resource Centre, including phone line and library, a publications unit, and a schools program.

CASELOAD VOLUMES

Caseload Monitoring

- When monitoring caseload volumes, the difference between the number of applications received and the number of such applications accepted, should be noted since the acceptance rate is much lower.
- Local offices report cases for which worksheets are required, which do not reflect total workload of the staff systems. In particular, these do not include: "short" cases (summary information in person or by telephone of just a few minutes duration); information and education services; other outreach work to the public or to particular target groups; community and justice development work associated with the core services; or the administrative duties associated with intake, eligibility determination, tariff referral or general office operations.
- It is also likely that civil non-tariff work, done by staff, is under-reported to a significant degree. There are no billing incentives for timely completion and submission of worksheets, nor do local offices receive timely and regular data reports.

Classification of Caseload

For statistical purposes all applications are categorized as follows:

- Criminal
- Family
- Civil

Family

Family is further broken down into the following subjects:

- Adoption
- Child protection
- Common law
- Custody/access
- Divorce
- Maintenance applicant
- Family, other
- Maintenance respondent
- Paternity
- Property division
- Residence/no entry
- Separation
- Spouse abuse

Civil

Civil is further broken down into the following subjects:

- Bankruptcy
- Lawyer complaint
- Police complaint
- Consumer
- Contracts
- Credit collection
- Debtor
- Estate
- School
- Torts
- WCB
- Human rights
- Immigration
- Income tax
- Incorporation
- Insurance
- Labour
- Landlord/tenant
- Mental health
- Small claims
- UIC
- Other civil
- Motor vehicle
- Municipal
- Name change
- Native rights
- Notarization
- Pension
- Prison
- Real property
- Social assistance
- Wills

Caseload Data

The operational units which receive and process applications are as follows:

- Branch Offices
- Community Law Offices (CLO)
- Native Community Law Offices (NCLO)
- Area Directors

The following data for the year 1991/92 indicates the type of work performed by each of the operational units:

	Number of Applications			Applications Accepted		
	Criminal	Family	Civil	Criminal	Family	Civil
Branch	33,784	21,898	15,061	27,299	14,384*	4,030
CLO	11,913	9,709	7,628	9,851	7,182*	1,614
NCLO	2,414	1,560	2,629	2,057	975*	1,107
Area Dir.	5,687	3,862	475	4,673	2,729*	114
Totals	**53,798**	**37,029**	**25,793**	**43,880**	**25,270**	**6,865**

* Estimates

Comparison of Workloads

Operational Unit	Total Accepted Applications	Percentage of Workload
Branch Offices	45,713	60
CLOs	18,647	25
NCLOs	4,139	5
Area Directors	7,516	10
Total	**76,015**	**100**

Caseload Growth

Applications

Year	Criminal	Family	Civil	Total	Percentage Increase
1989/90	39,736	25,119	22,315	87,361	+ 7.0
1990/91	43,810	31,557	25,407	101,001	+ 15.6
1991/92	53,798	37,029	25,793	116,815	+ 15.6

Appeals: 1989/90 - 191; 1990/91 - 227; 1991/92 - 195.

Increases

	Criminal	Family	Civil
1989/90	+ 4.9	+ 11.2	+ 6.5
1990/91	+ 10.2	+ 25.7	+ 13.8
1991/92	+ 22.7	+ 17.3	+ 1.5
1992/93 *	+ 16.0	+ 22.4	+ 18.4

* First quarter

Accepted Applications

Year	Criminal Approved	% + -	Family Approved	% + -	Civil Approved	% + -	Total	% + -
1987/88	28,575		11,259		4,742		44,621	0
1988/89	30,381	+6	12,442	+10	5,037	+6	47,949	+ 7
1989/90	32,411	+7	16,114	+29	5,277	+5	53,895	+ 12
1990/91	35,962	+11	21,270	+32	5,236	-1	62,588	+ 16
1991/92	43,880	+22	25,270	+19	6,865	+31	76,135	+ 22

*Appeals: 1987/88 - 45; 1988/89 - 89; 1989/90 - 93; 1990/91 - 120; 1991/92 - 120.

Ratio of Applications Accepted to Applications Received

Year	Criminal	Family	Civil
1989/90	81%	64%	24%
1990/91	82%	67%	21%
1991/92	82%	68%	27%

Volume of Referrals to the Bar

1988/89:	+ 6.0%
1989/90:	+ 6.0%
1990/91:	+11.2%
1991/92:	+22.2%

These rates rose steeply starting in July 1991. A comparison between the total number of criminal law referrals in the last quarter of 1991 and the first quarter of 1992 shows an increase of 15.8%.

Family law referral numbers were more volatile:

1987/88:	+ 9.1%
1988/89:	+11.1%
1989/90:	+27.8%
1990/91:	+11.9%
1991/92:	+18.1%

A comparison between the total number of family law referrals in the last quarter of 1991 with the first quarter of 1992, shows a 20.5% increase. Projections for 1992/93 suggest rises of a further 23% in criminal law referrals and a 14% increase in family law referrals.

Number of Accepted Cases Referred to the Bar

Year	Accepted Cases				To Bar			
	Crim.	Family	Civil	Totals	Crim.	Family	Civil	Totals
1989/90	32,411	16,114	5,277	53,895	31,220	13,073	509	44,882*
1990/91	35,962	21,270	5,236	62,588	34,739	14,637	570	50,036*
1991/92	43,880	25,270	6,865	76,135	42,640	17,723	2,312	62,734*

*Appeals referred to the bar, included in total: 1989/90 - 80; 1990/91 - 90; 1991/92 - 59

Percentage of Accepted Cases Referred to the Bar

Year	Criminal	Family	Civil
1989/90	96%	81%	10%
1990/91	96%	69%	11%
1991/92	97%	70%	34%*

* Figures affected by the immigration statistics. See below

Immigration

Immigration applications are listed under the civil classification. While the number of accepted civil cases is small (i.e. 1991/92 - 6,865), there has been a large increase in immigration statistics, due in part from a 1991 court decision (Gonzales-Davis v. Legal Services Society) regarding the provision of legal aid in such cases, and also to a change in tariff policy. Immigration cases are discussed in more detail in a later section.

CLIENT ELIGIBILITY ISSUES – FINANCIAL

There is widespread concern regarding financial eligibility criteria for legal services. A wide range of attitudes were expressed, ranging from pleas to broaden eligibility to a concern that too many people receive legal aid. Many lawyers believe that the absence of a financial stake results in some clients undervaluing and misusing the service.

Many concerns were registered about inadequate access for people on marginal incomes, referred to as "the working poor." Several offices noted the difficulty this group has even receiving summary advice or assistance dealing with governmental authorities such as Employment Standards, the Workers Compensation Board, Unemployment Insurance Commission and the Residential Tenancy Branch. "Legal aid is all or nothing; the person who falls just outside is poorly served."

There are abuses. Local office staff and tariff lawyers report cases of perceived fraudulent applications. Some offices report good feedback from the bar, while others reported that some lawyers do not feel any responsibility to report abuses. Few lawyers resisted a responsibility to report, although one said, "squealing on your clients conflicts with solicitor/client privilege." Some lawyers raised concern about the adequacy of local office screening, while others lamented on the lack of support from headquarters in pursuing suspected abuse. "I know of only one case since 1981 that a person was forced to repay." "If you suspect a client does not qualify, head office doesn't care."

More complex concerns relate to applicants who qualify on an income test, but who receive property assets, normally the matrimonial home, after receiving legal aid services. Some lawyers question the exclusion from assets of the matrimonial home if the applicant is resident in it. There is a perceived lack of clear rules to address the matter of assets.

Coastal communities suggested that annual, rather than current, income tests should be applied to deal with those who are seasonally employed.

Lawyers are frustrated by the Law Society Ruling (G8)* requiring the prior permission of the Legal Services Society to convert from legal aid to private retainer, and by the administrative requirements of the society in considering these requests.

Finally, there is widespread frustration among offices and tariff lawyers regarding flexible eligibility criteria which are perceived as too subjective and applied in a highly inconsistent manner from location to location. One Lower Mainland office referred to clients who "office shop" if they are turned down.

Many changes were suggested, including:

- require applicants to swear statutory declarations respecting their income and assets; produce income tax returns, pay stubs and other documentation to verify income; and generally apply more stringent financial disclosure rules;
- consider annual, not current, income for those who are seasonally employed;
- impose user fees, to reduce abuse and to give clients a "stake" in the service;
- address assets, especially property, through easier conversion to private retainer, liens, or reverse mortgages;
- place onus on lawyers to report information that would affect eligibility and to report changed circumstances, and ensure eligibility review is conducted;
- improve the society's ability to investigate suspected fraud;

**Note:* Law Society Ruling (G8). See Appendix III.

- ensure greater consistency in application of criteria; and
- consider sliding or graduated scale, or a contribution-based system, as a way to extend service to the marginally employed.

These concerns and suggestions were compared with the society's policy handbook. It is clear that many practitioners are not familiar with society policies. It is also clear why many offices experience difficulties applying the policies. The document requires a thorough overhaul.

The vast majority of very low income applicants will clearly and legitimately qualify, as one would expect. The difficulty arises in the application of a flexible test in those cases of income somewhat above the low income ceilings (the society uses the Statistics Canada Low Income Guidelines, which differentiate by family size and population of area of residence).

The policies require too much guesswork, mostly by the support staff who must apply them. They are complex and provide inadequate direction. Many people in the system don't understand them. They are susceptible to arbitrary decisions. One suspects that many staff give up trying to apply them.

Example: "Compare the applicant's net monthly income to the Low Income Lines chart." The manual does not clearly define "net income" nor does it specify whether the income to be reported is family or applicant-only income.

Example: "In deciding whether or not to take an applicant's common law spouse's income into account, consider whether the spouse is already supporting the applicant or the applicant's children, and the effect on the relationship of taking the common law spouse's income into account. If the couple has been living together for more than two years, generally the spouse's income should be taken into account in assessing the applicant's eligibility."

A number of questions arise. How does an intake worker assess "the effect on the relationship?" Is this germane to financial eligibility? Is it a fair subject on which to hold an intake worker accountable? Is it not likely that an intake worker will just assume in favour of the applicant without canvassing the issue?

Example: The policy requires that debts be taken into account, but provides no guidelines.

The society has tried to design a flexible test that does not arbitrarily and unfairly deny coverage. This is a worthy goal and is supported. Indeed, it appears likely that greater coverage is now available to "working poor" applicants than is generally believed, and which may contribute to present volumes.

A flexible income test is appropriate, as is availability of assistance to the marginally employed. Similarly, where discretion must be exercised, it should be exercised in favour of applicants. At the same time, prospective applicants, and the public at large, deserve an eligibility process which is clear and applied consistently. The present policy cannot meet this test within a single office, let alone the province.

A flexible income test requires greater attention to assessing reasonable contributions than appears to be the case at present.

It is not possible to quantify the extent of the problem. It is not likely a large portion of intake; on the other hand, if as few as 0.5% of accepted applications should have been refused on financial grounds, this represents potential savings of approximately $400,000. Conversely, it appears likely that a more rigorous process could produce additional client contributions without at all resorting to draconian standards.

Recommendations:

36. The society must review its financial eligibility policies to ensure they are fair, equitable and consistently enforced; and that those charged with the administration of flexible income tests are provided with adequate guidelines to assist assessment and the exercise of discretion. In developing these policies, it should seek both external expertise and the advice of those field staff who now review and decide on applications.
37. The society must ensure a reasonable verification of income and assets. Local offices must be assured that questionable applications will be investigated, and that fraud will be prosecuted.
38. The financial eligibility guidelines should be published.
39. The society and the Law Society should consider replacing Ruling G8 with an administrative mechanism to simplify the processing of requests to convert to private retainer, while protecting the legitimate interests of clients.
40. Lawyers representing legal aid clients should be required to report financial information not indicated at the time of application, or changed financial circumstances, and should be entitled to request an eligibility review if they consider it necessary.
41. The society is urged to design and implement a graduated scale approach to financial eligibility. (The review notes a successful experiment in Manitoba intended to extend coverage to the working poor.)
42. The society should eliminate the $10 user fee levied to income assistance recipients, but seldom collected; and should replace the $30 user fee for other clients with a graduated scale approach to client contributions.

43. The society must place the present process of appeal to the executive director, with a simple, fair and preferably local mechanism for clients who wish to appeal an eligibility or other administrative decision.
44. The society should review its data to examine the profiles of its criminal law, family law and other clients, including income and employment status; and with attention to geographic differences. This review should be publicly released.

CLIENT ELIGIBILITY – COVERAGE

Conflicting attitudes emerged regarding legal aid coverage. Some lawyers and local offices felt that family law coverage is too wide. "It's a free ticket to have done whatever they wish." Others criticized easier access for criminal compared to family and "poverty law" coverage, challenging that many family and administrative law matters have more severe consequences than most criminal cases for which legal aid is granted. Some worried that the government wishes to undermine legal aid for criminals, reminding that an essential role of the criminal bar is to defend people against unlawful acts by the state. Others feared arbitrary restriction of coverage for budgetary reasons. Finally, the views of some that the intake process should be entitled to reject apparently frivolous matters were countered by a staff lawyer of long seniority who recalled "endless debates on all these matters through the years."

Several lawyers and local offices proposed changes to family law coverage, including requests for: clarity and precision about the services covered; the ability to refer a client back to the society for an eligibility reassessment if counsel concludes a case has reached the "end of the road," and with an appeal mechanism available to the client; and for better assessment at the intake stage. Others pointed to particular perceived anomalies in family coverage.

There were several appeals for the society to cease coverage of impaired driving charges, although there were also appeals for coverage for first offence impaireds. Some lawyers advocated abolition of coverage for a range of offenses: multiple impaireds; theft under; "low-end" narcotics; and basic summary conviction offenses. There was also comment regarding the criteria to be strictly the likelihood of jail. Others made a point of challenging restrictions of criminal coverage.

There were requests to cover civil appeals, such as judicial reviews of *Guaranteed Available Income for Need Act* tribunals, as well as a summary advice, with a review of particulars, and including guilty pleas if appropriate, be available to all through the staff system.

Several lawyers expressed considerable concern about clients who frequently change lawyers. Discussion with a number of staff counsel indicates considerable variations throughout the province in the application of society policy that client-initiated change is ordinarily available only once.

The society policy manual has been reviewed with respect to coverage. It appears that some offices and lawyers are unfamiliar with society policy. For example, where there is merit to the case, provision does exist for judicial review of tribunal decisions. Local offices may provide up to two hours summary advice beyond the first interview without conducting a financial eligibility assessment, and extensive discretion is allowed local offices in prioritizing their non-tariff work.

There is a more fundamental problem, however. The closer one examines the policies, the more difficult it becomes to see how they accommodate basic standards of fairness. The guidelines are not published; appeals are restricted to administrative review; and the policies contain vast areas of administrative discretion on highly subjective issues. Most disturbing is the application of an "urgency" rule to a number of legal problems. One wonders, for example, at the fairness of policies which can grant service to only one party to a family law matter even though both are financially eligible.

Policies which would restrict criminal coverage by type of offence cannot be justified. If it is valid to deny coverage for impaired driving charges, it is equally persuasive to argue for coverage for first offence impaireds. It is not the purpose of legal services to create a scale of merit among criminal offences.

Policies which give financial and service delivery priority to criminal law services over family and other civil matters are unacceptable. It is inconceivable that a majority of the poor and disadvantaged require criminal law services more than they require family or administrative law service.

Recommendations:

45. The society should minimize coverage restrictions on the basis of type of offence or type of family action.
46. The society must ensure an equitable and appropriate allocation of resources for civil, administrative, family and criminal matters.
47. A more flexible, need-driven approach to service delivery should be matched by a more flexible approach to coverage, with the goal of extending assistance to many first offences and even guilty pleas; service may not necessarily entail tariff referral, or staff counsel involvement.
48. The society should ensure that coverage policies, especially in family law, provide clear guidelines to those exercising administrative discretion, eliminate arbitrary distinctions, make the guidelines available to applicants, and provide fair appeal mechanisms.

49. Government is urged to consider ways to achieve an integrated, comprehensive approach to all family law services, and to involve legal services, lay advocates and client constituency groups in that process.

TARIFF ADMINISTRATION

Managing Tariff Referrals

Some community groups complained about delays clients experience in securing and seeing tariff lawyers. Referring offices confirm delays, especially in family matters, and even in urgent cases; there were several references to delays of up to three weeks to find a lawyer.

Most offices stressed the importance of developing strong working relationships with their local bar, and feedback from the profession underscores this message. One staff lawyer commented, "I serve two markets: I serve the applicants, and I serve the providers. I feel obliged to both." One tariff lawyer observed that the local office staff were simply voices on the phone. Their proficiency was complimented, but a concern was raised that occasional meetings would be useful.

There were some calls for local offices to improve intake processes, with the staff helping to identify the issues and clarifying what service would be provided by the lawyer.

Several lawyers complained that there is favouritism in referrals in some offices, including personal relationships influencing the process. On the other hand, one staff lawyer observed that the society should have clear and publicized referral policies: "the bar can get concerned if they don't understand the system."

Tariff lawyers in some larger communities complained that courtworkers also encourage clients to select counsel preferred by the courtworkers, and felt this is sometimes for personal reasons. A number of courtworkers indicated a need to informally screen out lawyers they regard as less competent or otherwise inappropriate.

Recommendations:

50. The society must be responsible for all aspects of tariff service management, including both ensuring timely and effective service to clients, and efficient administration for tariff practitioners.

51. Local offices must develop and maintain good working relationships with their local bar, and exercise flexibility and discretion in tariff management.

52. Referral policies and procedures used by local offices must be clear and fair, and they must be publicly available. The society must ensure that the referral process is not manipulated in favour of particular lawyers and must ensure that complaints are addressed. Courtworker services must also avoid unfair practises in referring or recommending lawyers.
53. The role of courtworker organizations with respect to legal aid intake seems confusing and less than efficient; the society is encouraged to carefully review its needs, in consultation with affected organizations.

Local Bar Availability

It is generally not difficult to find local lawyers willing to take criminal referrals. It is the norm in family matters that if local lawyers are available, they are not available quickly; too many family cases are referred to lawyers in distant communities. The willingness of the local bar to accept referrals depends on the size of the bar and on the number of new lawyers trying to establish a practice. In all but the largest communities, a change in the habits of one or two lawyers can significantly affect the availability of legal aid services.

The present tariff rates, combined with the recession, have had a noticeable impact on the pool of lawyers willing to do legal aid work, except for family matters.

Changing Lawyers

If one asks local office staff, clients, or tariff lawyers about how often a client is entitled to change lawyers, one learns that it can be any figure from zero to five.

Recommendation:

54. The society is urged to clarify its policy respecting change of lawyers and enforce the policy. Clients need to be clearly advised of the policy. The policy should not be used as a way to avoid addressing poor service by some practitioners.

Adjournments

There is a great deal of concern about adjournments. While a number of lawyers quite properly pointed out the difficulties they face with court delays, family matters scheduled after criminal matters, and costly waiting for their cases to be called, many others, including lawyers, other professionals and lay advocates, questioned the frequency of adjournments initiated by lawyers on the legal aid tariff.

One social worker asked, in relation to family legal aid matters, "is there something 'magic' about three appearances?"

Recommendation:

55. The society should require that billing forms and staff worksheets note all adjournments, who initiated the adjournments and the reasons for them.

Approvals

Several local offices suggested that increased approval authority should be delegated to them, on the basis that they are more aware of local conditions and better able to assess the reasonableness of requests.

Recommendation:

56. The society should delegate as much approval authority as possible to local offices, together with suitable policy guidelines to assist them.

Processing Tariff Bills

Lawyers commented that the society has greatly improved its turnaround time in the past year, and payments are routinely received within four to six weeks of billing. One commented that "the degree of satisfaction can depend on the degree of reliance on Legal Services Society work."

Others were critical of an apparent society practice in the spring of this year of printing cheques, then holding them pending receipt of funds from the government, resulting in three week delays. There were also rumours in the tariff bar of a looming bankruptcy and the likelihood of lawyers not being paid for work done.

Anxieties about payment delays resulting from the year-end cash flow situation are understandable. However, the rumours in circulation during the review that the province would allow bankruptcy of the society were unfortunate, since they were based on speculation.

The society was asked to provide payment information; virtually all correct billings were paid within four to six weeks. What was surprising was the number of billings returned as incorrect – upwards of 20% in the early months of 1992. Improvements should perhaps focus on ways to ensure the accuracy of bills.

Recommendation:

57. The government should ensure that the society's cash position allows it to pay its accounts within a normal 30-day period.

Carrying Disbursements

Family law lawyers, especially those carrying significant numbers of legal aid files, were concerned that the society rules for interim billing required them to carry substantial amounts of disbursements for long periods of time.

Recommendation:

58. The society should work with the family bar to reduce the necessity of tariff lawyers carrying disbursements for long periods.

User Fees and Contributions

The present requirement of $10 from income assistance clients, and $30 from all others, is not being followed in most of the province.

Recommendation:

59. User fees should be replaced by a graduated scale of contributions, based on ability. Contribution policies should be consistently enforced; and exemptions from the policy, if provided for, should be consistently applied.

Complaints

When people have a complaint about service, they don't know how or to whom to complain.

Recommendation:

60. All clients should be provided with simple, plain language information which outlines the services being provided and ways to appeal in case of difficulty.

Monitoring Tariff Services

Widespread concern was expressed about the need to monitor tariff services. There was, however, considerable disagreement on how best to do this.

A women's centre advocate made the following comments:

> "There should be a way to allow clients to evaluate the service of lawyers; and there should be a complaint system. Many clients vent their complaints to us, sometimes in tears; sometimes we try to follow up directly with the lawyer; sometimes we go to Legal Services Society to try and change lawyers, but it is often too late. We find that if we go with the clients, the lawyers are more responsive. They know we are involved, and they know we are policing them."

Two staff lawyers felt they should not be involved in monitoring tariff work, while 10 offices saw themselves playing a part in this process. A staff lawyer was concerned that the power that such a responsibility would carry could jeopardize working relationships, and felt that monitoring should be the responsibility of headquarters, with local office comment on printouts of patterns. Several suggested routing bills through local offices, noting that they presently receive no information about either services actually provided or costs incurred: "We refer cases out and that's the last we hear; we have no idea if the service was provided, how much was provided, or how good it was."

Several staff lawyers observed that their ability to monitor services was substantially better when they were sharing in the criminal, family and duty counsel work. "If we have staff lawyers participate in tariff work to some extent, we then can see what is going on and help to monitor."

Other suggestions included: random client satisfaction surveys; tariff audits; and allowing judges the opportunity to comment on the quality of services. One office asked that the bar "self-monitor and not turn a blind eye."

A large number of lawyers felt that a monitoring system was appropriate. There were many suggestions about how best to do it.

Most were variations on audits by the society, using its computer system: more investigations of billings; spot audits; the right to inspect time sheets. "The system must perceive a reasonable possibility of an audit being done." Others considered some form of peer review process. While all saw the necessity of Law Society involvement in serious cases, many felt that the Legal Services Society has an obligation to police the service. One lawyer welcomed it: "I do not fear accountability; indeed, if there's accountability, I'll probably get more referrals!"

Tariff Abuse

Concerns about the abuse of tariff services by private practitioners arose, unsolicited, in most communities by local offices and by the bar. The extent of perceived abuse is not great, but it does exist, and it tarnishes the reputation of the whole legal aid system. The following is a sample of comments:

> "We've seen some competency problems: unnecessary work, and setting trial dates improperly in order to have them collapse."
>
> "Weeding out bad lawyers by reporting them to the Law Society does not help their clients; there are patterns to the complaints we get."
>
> "We [in the bar] bitch to one another that some colleagues abuse the tariff."
>
> "There's room for abuse in cozying up to the local office."

Suggested remedies included: greater vigour by the society in taxing questionable accounts; a cap on billable hours; and granting to the society the right to refuse referrals to those who do substandard work.

Staff Lawyers Engaging in Tariff Work

Staff counsel are actively discouraged, if not prevented, from engaging in tariff cases. Many staff lawyers, and others, question this policy. Some of their comments include:

> "When I did a considerable amount of tariff work, I had a better chance to observe the quality of tariff services; it is now more difficult. A small staff component gives you an opportunity to be involved in the system, to watch the service and to identify specific problems. It makes administrative judgements easier, such as requests for bail reviews or judgment calls on the likelihood of jail in summary conviction matters, simply because we're more connected to the 'real' world. We wouldn't need a lot of time doing tariff work, but some would be helpful."
>
> "There should be some quality control in the system; an increased staff counsel role in court could help."
>
> "We're cut off from the private bar's activity; when (I was formerly) in court, we could see what was going on. A window on the bar would help."

Screening Private Lawyers

Several local offices advocated the right of the society to set standards for receiving tariff referrals, and to screen referrals to ensure adequate standards of service. They have no ability at present to refuse referrals, regardless of their experience of complaints.

Staff and community views tended to favour some ability to screen referrals; the bar was quite divided. Some advocated no limitation except under the disciplinary processes of the Law Society; others saw value in some screening, but were very cautious. There were also calls for better use of senior counsel in difficult, complex cases.

Some offices are presently screening referrals informally, without guidelines.

Discussion

The society is responsible for the services it delivers and pays for. The fact that private practitioners provide service does not reduce that responsibility. The view of some that, by definition, all lawyers are qualified or suitable to accept all legal aid referrals is absurd, as is the view that the Legal Services Society should have no rights to restrict or deny referrals.

At present, there is no effective accountability for tariff services. The service providers offer no information back to the referring agents; the payment office makes little or no effort to verify either the provision of service or client satisfaction; and the parts of the system do not collaborate to monitor service quality, except in the case of very serious complaints. And there are structural and policy impediments to addressing complaints or demonstrable problems.

The interests of the society, the bar, clients and the public require that tariff services be monitored: the society has obligations for client service and the expenditure of tax monies; the profession wishes to maintain high standards of service and credibility; and clients need assurance of proper, ethical service. The purpose of an effective monitoring system is to ensure the system is self-correcting to the greatest possible extent; it has a punitive purpose only as a last resort in the case of clear abuse.

The mechanisms of the Law Society are not the appropriate first step. Because they are so closely tied to formal discipline, they should be used when all else fails.

There is not a lot of abuse of the tariff by lawyers. Further, at least some community and client dissatisfaction is the result of failings other than by their lawyers. However, it was disconcerting to discover in most communities that lawyers had at least some concerns about a colleague or colleagues. Abuse must not be tolerated and incompetence must not be ignored.

If there is some irritation in the tone of these comments, it is because effective measures to monitor and control tariff spending should have been in place from the start.

Recommendations:

61. The society should be entitled to make selective lawyer referrals, provided it follows clear, fair and published policies, and provides a mechanism for review and appeal. There should be a preference for experienced counsel in complex, difficult cases; there should be a preference for family law or other specialists when available and as appropriate; lawyers who abuse the tariff should have referral privileges withheld; and the society should have the right not to refer clients to lawyers with habits of missing appointments, missing court appearances, verbally harassing clients, or otherwise providing poor service. The society should consult with the Law Society in developing a detailed policy.

62. Local offices should have the following roles in monitoring tariff services:
    - offices and clients should receive copies of tariff bills;
    - there should be sufficient staff counsel so that they can participate in tariff services, taking an appropriate share of referrals and duty counsel work; these must be a normal caseload mix, rather than all duty counsel and guilty pleas; and
    - they should convene periodic liaison meetings with the local bar, including discussion of difficulties and concerns.
63. The society should implement a central monitoring process, using data from billing forms to monitor various service patterns, and conduct audits where patterns or complaints are warranted. The society should also institute random audits.

Current State of Service Delivery

GENERAL CONCERNS

Communication and Co-operation

The private bar generally believes itself to be providing good service to legal aid clients, consistently regards itself as able to provide a superior service than staffed services and presents itself as generally diligent in providing service.

Lawyers also tend to be quite isolated from feedback from local offices and from community agencies who refer clients for legal aid. Were they less isolated, they would discover that while there is considerable respect for their work, there is also widespread dissatisfaction.

Similarly, the staffed offices can be isolated from feedback and tend not to be as sensitive to perceived shortcomings as one would expect.

In most communities there is insufficient communication about the accessibility, suitability and quality of legal aid services among those responsible and with those who depend on the system.

Recommendation:

64. There must be regular opportunities for the private bar, local offices and community agencies to discuss service delivery concerns. These parties must acknowledge one another as important contributors and partners, with none owning exclusive rights over the service. Working relationships among them must be enhanced.

Local Office Operations

Private lawyers in two communities made specific reference to excellent working relationships with the local offices. One lawyer suggested placing social workers in the offices. In a third community, another observed that non-tariff services require additional staffing.

Community groups and agencies in most communities visited commented specifically on local offices. They were generally complimentary, indicating that service was accessible, helpful and supportive. Offices are seen as non-judgmental and neutral; they make time to see clients; they resolve complaints; and they supply information and printed materials to community groups. In some meetings, government agencies and court administrators requested additional information about available services, suggesting a need for better ongoing communication. One government employee stated that he sometimes obtained legal advice from the local legal services office that was not forthcoming from his own organization's headquarters. There was some comment suggesting that community agency contact was too reliant on agency initiative. "There is no contact with Legal Services unless we initiate it." Groups were critical of inadequate staffing, overworked staff, insufficient paralegal staff, and insufficient staff time for information and education work. They requested more support of community groups and of lay advocates. More staff lawyers and paralegals were proposed for most offices. Communities served only by visiting staff counsel from other cities were critical of inadequate service.

Branch and community law offices were somewhat more critical of themselves, and expressed considerable frustration with the restrictions placed on them. Several lawyers felt that not doing court work hampered their ability to "keep our skills sharpened," remain in touch with the courts and the profession, and monitor the functioning of tariff services. One described in some detail the need to develop rapport "with every law office, agency, government office, and non-statutory resource in our service area to ensure that people who need legal services get to us," while some offices appeared to take a more passive approach. All offices commented on high, and rapidly growing, volumes of work and the difficulties of doing everything expected and of maintaining priorities. Education and community group support work tended to suffer the most in the branch offices, less so in community law offices because of their mandate and priorities. Staff with large service areas or adjacent area directors were very concerned that many communities have inadequate access to non-tariff services. At the same time, few had high expectations of additional staff or offices. All criticized the inadequacy of civil non-tariff services. One office said, "we dare not reach out to some of the people who are least well served because we could not handle the flood."

Area Directors

Comments were made regarding services in Vernon, Richmond, and the Port Alberni and coastal areas. Community groups asserted the need for local staffed services. They were critical of the inadequacy and inaccessibility of both tariff and non-tariff services. There was also some concern that area directors were not adequately knowledgeable or trained. The system also relies on community agencies for free legal aid intake work.

A caseload analysis indicates that if staff counsel were to share in work now done exclusively through the tariff, several area directorships could be replaced by staffed services with a capacity for criminal, family and civil/administrative work.

Recommendation:

65. Area directorships should be phased out in favour of staffed offices wherever case volumes justify provision of staffed services, and leaving at least 40% of cases to be handled by the private bar.

Private Bar Services

Private lawyers generally felt that the bar responds suitably and adequately to legal aid referrals, especially in criminal matters; there was a recognition that local family services were problematic in most communities.

Branch and community law offices provided a more mixed response to the quality of tariff services. In many communities, offices were pleased with the availability of lawyers to accept referrals, though some noted that this often depended on both the economy and the number of new lawyers setting up practice. One community office sympathized with a common complaint of the bar: "people have no idea what lawyers cost; if they were paying clients, they would not be so cavalier about demanding things of their lawyers." Another noted that their relationship with the bar is crucial, and pleaded "do not fix what is working." At the same time, the offices do receive complaints about tariff services, and thus see the difficulties. Specific concerns included a fear that some elements within the bar discriminate against legal aid clients – for example, hearing lawyers saying "I can do more for you if you pay me privately" – and concern that some lawyers don't listen to their clients or give good advice. Most offices felt a need for mechanisms to monitor the quality of tariff services.

Community agencies and advocacy groups were also concerned at the quality of tariff services. They worried that too few lawyers understand issues of poverty, sex or race. They report clients as being intimidated by lawyers, unable to communicate effectively with them and unable to understand what is said to them. Many expressed the need for clients to have an advocate with them when seeing a lawyer, especially if in crisis. They say there is little contact with the bar unless they initiate it and that lawyers need to be more respectful of their time and commitments. They are concerned that lawyers do not spend sufficient time with legal aid clients. Smaller communities are frustrated by the lack of choice of lawyers, and by dependence on out-of-town counsel. One lay advocacy service said "the smart lawyers are those who work together with us – we get along reasonably well." Finally, despite criticism and concern, most community groups acknowledged that the frustration of their clients was often, in fact, with the legal system as a whole and not simply with their lawyers.

Services to People With Disabilities

In several communities, concern was expressed that services respecting people with disabilities were seriously inadequate. In communities such as Penticton and Dawson Creek, particular reference was made to people with mental disabilities who have been de-institutionalized. Difficulties respecting discrimination in rental accommodation and security deposits are compounded by both difficulty and bias respecting the testimony of victims. Sexual assault concerns were also identified. Other communities indicated that the legal needs of mentally ill people were poorly met. The growing importance of a self-help model of advocacy was stressed by some organizations.

Recommendation:

66. The society is urged to improve support for advocacy services for people with disabilities, including self-advocacy, and to improve the legal services system's understanding of and responsiveness to disability issues.

Services to Cultural and Linguistic Minorities

A startling theme was repeated in most of the communities visited: "minorities lose from the time they come in the door." Community agencies and advocacy groups throughout the province advised of the needs for: culturally sensitive service; cross-cultural and race relations training for staff and for lawyers accepting legal aid referrals; staff who can assist those whose first language is not English; bilingual and multi-lingual services; and written materials in a variety of languages.

Several communities expressed frustration with the inadequacy of interpretation and translation services. And some multi-cultural services expressed frustration at the dependence of legal services on their free services.

Both community and bar sources suggested that affirmative action hiring within the legal services system was needed.

Several branch and community offices received praise for their collaborative work with multicultural communities. There is an increasing body of research indicating a significant need for legal services on a wide variety of issues within immigrant communities. Much more work is needed to provide adequate access to services. In particular, these services need to be identified as part of the core, mainstream system.

Recommendation:

67. The society is urged to improve the accessibility of legal services to minority communities; to increase the availability of information in languages other than English; to support the advocacy services of minority organizations; and to effectively and quickly increase the multilingual and multicultural diversity of its own staff.

Services to Native Peoples

This report does not address the question of legal services to native people to any significant degree. It was not possible within the time frame to consult adequately with the aboriginal communities or with the native legal services programs. The following comments simply reflect concerns that arose from limited exposure to these issues. Further consultation is required.

The present array of services seems woefully inadequate: it was suggested that a "greater share of the pie" ought to be allocated to native services. It was pointed out that no native legal services programs, except for native courtworkers, operate in the Greater Vancouver area; a native community law office was suggested for "greater Surrey."

The review heard considerable representation about the difficulties that native people experience in dealing with the justice system and with legal aid services. Aside from any consideration of native legal services and alternate justice programs, the legal services system is over-represented by native clients, but dramatically under-represented by appropriate services, native staff, native lawyers and native board members at both community and Legal Services Society levels.

Legal Information Counsellors (Paralegals)

There was widespread acknowledgement of the value of trained paralegals in the delivery of legal services, particularly in family and civil/administrative matters. Virtually all field offices and most community groups advocated additional paralegal positions. They are regarded as a cost-effective means of providing information, summary advice, procedural assistance and representation in a number of administrative tribunals; they are viewed as an essential link between clients, community advocacy services and referral lawyers; they are viewed as having important roles respecting the provision of information, education, self-help assistance and supporting community and justice development work.

Significant concern was expressed regarding the qualifications and training for paralegals, notably from paralegals and lay advocates themselves. While this matter requires serious attention, its solution must respect the fact that a majority of paralegals active in poverty law have their start as lay advocates in community groups or as secretaries/legal assistants with the Legal Services Society and both career pathways must remain open.

It is time to revisit and update the question of qualifications, training and standards applied to paralegals in public legal services. This task must include the full involvement of legal information counsellors themselves, together with lawyers fully experienced in poverty law and family law, and preferably including experienced lay advocates.

Some suggestion was made that statutory provision be made to allow legal information counsellors and courtworkers some access to provincial court. It was also acknowledged that judicial discretion now allows some limited court roles in certain communities, primarily in family matters where counsel are not available.

Paralegals were also advocated for very remote communities such as Good Hope Lake, Dease Lake, Atlin and Lower Post to help provide local access to outside services. Manitoba has undertaken a successful experiment using paralegals in remote northern communities.

Recommendation:

68. The use of paralegals in the delivery of legal services must be significantly expanded for reasons of both service quality and cost-effectiveness. The society should develop, with the full participation of paralegals in the system: standards governing their work; criteria for qualifications; and training standards. The society should take into account the value of ensuring career entry to persons who have been disadvantaged and self-help advocates.

Lay Advocacy

The review heard extensively from lay advocates working, and in a number cases volunteering, in community agencies and organizations. These include transition houses, women's centres, anti-poverty organizations, native organizations, seniors groups, multicultural service agencies, human rights groups, agencies working in criminal justice and others.

Over the last ten years, lay advocacy has emerged as an effective force in British Columbia. One suspects this development resulted in part from the failure of the Legal Services Society service network to respond to the need for civil and administrative poverty law services.

Interestingly, the Public Legal Information and Education Unit of the society actively supported this process and the Law Foundation has become a major funder of these services.

Lay advocates are among the most articulate critics of present legal aid services because they are most often the agents referring clients into legal aid services. They have also done considerable work in determining how best to provide clients in crisis with information and support in their dealings with the legal system. They are among the most informed observers of legal aid services outside the profession and those employed by the system, and should be regarded as an invaluable resource.

At the same time, many have received little formal training and have little access to legal supervision or help. Nevertheless, they provide a highly personal, direct and sensitive service.

It would be to the mutual advantage of the Legal Services Society and community advocacy programs to consider a closer, more formal relationship, including staff funding and access to training and legal supervision.

Advocacy services are instrumental in maintaining the integrity of government services on whom vulnerable people depend. They are different from the Office of the Ombudsman, which addresses questions of administrative fairness; advocacy services promote the particular needs and interests of clients.

Government can anticipate increased pressure for funding from a variety of advocacy interests. Service providing ministries must consider several issues with care: the conflict of directly funding "hands which are intended to bite;" protection of the public respecting the qualifications, training, legal supervision and accountability for client advocacy; and the adequacy of funding to provide truly useful services. Careful consideration should be given to delegating to an independent Legal Services Society responsibility for direct funding and oversight of advocacy services, given adequate funds for this task.

Recommendations:

69. The society should provide staff training and legal supervision to lay advocates in a variety of community based agencies and organizations; and should develop a plan to extend funding support to the salaries of lay advocates.
70. Government should carefully assess emerging demands for advocacy services and should endeavour to provide adequate funds for them. It should assign funding and administrative jurisdiction of advocacy services to the Legal Services Society in order to ensure independence for the service providing ministries; provide adequate legal supervision; and address issues of qualifications, training and accountability.

CRIMINAL LEGAL AID SERVICES

Service Delivery and Quality

It is a common perception that lawyers do a small amount of legal aid work as part of their practices; they are not dependent on legal aid, but regard accepting legal aid cases as part of their professional duty and contribution to the community. The traditional exceptions are very junior lawyers who do a lot of legal aid work in order to build their practices. This perception continues to be the reality for the majority of lawyers, especially those working in the smaller cities of the province.

However, two trends alter the picture. The first is cyclical and expected: the state of the economy, and therefore the health of the private demand for legal services, can affect willingness to take legal aid referrals. In many communities which are feeling the recession, lawyers report an increased desire for legal aid business. The increased tariff has also increased legal aid participation.

The second trend appears to be a permanent change: the emergence, in the larger communities, of lawyers who are working mostly or even exclusively on legal aid referrals; some have done so by necessity, others by choice. The interests of this group are quite different from the larger group who do not rely on tariff referrals for their primary income.

Most private lawyers believe that criminal legal aid services are readily accessible, in that local lawyers will accept all available referrals; are provided efficiently; and are of high quality.

The private bar generally believes it is able to provide a service that is inherently superior to what could be provided by staff counsel, and is aggressive in asserting its rights.

There is some concern within the bar that the tariff should be structured so as to encourage the use of senior counsel on complex, difficult cases.

Few private bar voices suggested increased roles for staff counsel. One felt there was room for additional staff, expressed concern about the volume of cases handled by some colleagues, and hoped the present tariff rates would encourage a reduction of that volume. A second lawyer suggested that staff could effectively handle some matters (such as first appearances and bail hearings) at the early stages of proceedings.

Lawyers in most communities indicated some level of concern about abuse of tariff services. While the frequency does not appear to be great, it is sufficient to require attention.

Field offices reported that accessibility was not a problem. There were no difficulties finding lawyers to accept criminal referrals. They also felt that service quality was fine for the most part. While they generally felt that the private bar should continue to handle most criminal work, some strongly believed that the merits of staff delivery had been improperly dismissed and advocated an increased role for staff counsel.

Two former staff lawyers with the Burnaby public defender project remarked positively on that experience. One called it "the best law firm in Burnaby."

Offices reported a significant number of complaints and felt that better monitoring of tariff services was needed. Their concerns include: problems of counsel not being adequately prepared, and requesting adjournments; and not seeing clients until just before court.

A number of staff lawyers felt they ought to share in criminal work in order to keep their skills sharp, in order to avoid losing touch with both the bar and the courts (necessary for a number of the judgement calls they must make, for example respecting likelihood of jail in some charges), and to monitor the delivery of tariff services. Some also saw efficiency values in increased staff involvement.

An employee in the Vancouver office suggested the inclusion of a mental health advocacy worker, which would provide a more comprehensive approach to multi-need clients, and reduce summary advice demands respecting mental health and housing problems.

Community group views were much more diverse and further criticisms of present tariff services emerged. Their views were highly anecdotal, but they appeared in a wide variety of different communities. Some perceive tariff services to generally work well.

The following is a sampling of complaints: "we've had situations of lawyers referring to 'it's only legal aid;'" "stories circulate about under-the-table money demands from legal aid lawyers;" "I attended court with a mentally handicapped client who'd spoken only to the lawyer's secretary, and he first saw his lawyer five minutes before court." Police officers in two communities expressed personal views that more cases are now being taken to trial unnecessarily.

Several groups suggested service improvements: for example, some clients don't necessarily need "full service;" their situations are straightforward; "they need information and have a decision to make." A native courtworker identified the need for staff with more "clout" than courtworkers to encourage Crown Counsel to reduce the severity of charges (i.e. robbery rather than theft in the case of a stolen jacket).

Finally, one community group commented that persons charged with criminal offences receive faster, better service than the victims of crime.

Service Needs

One community proposed that the field office staff should provide summary and procedural advice and self-help assistance for non-eligible but vulnerable clients in criminal matters.

Several representations were made regarding the need for assistance to first offenders: "hardened criminals get lawyers, but the first offender, who may be totally intimidated, is out of luck." Others questioned the fairness and rationality of the "likelihood of jail" criterion when it denies coverage for a first impaired charge while providing coverage for subsequent charges.

Better understanding by lawyers of people with mental illnesses was also recommended, together with the addition of mental health courtworkers and advocates in communities with significant populations.

One lawyer who does a fly-in circuit commented that the constraints of the circuit prevented him from giving all cases the kind of time and considerations he would like, although he was fortunate in having a judge who would not pressure counsel on time. A staff lawyer also referred to a number of very isolated communities in the northwest corner of the province, suggesting that a paralegal or courtworker might help to improve access to outside services.

Recommendation:

71. The society should consult with agencies whose clients enter the criminal justice system, and with the bar, to more fully consider the circumstances and needs of those clients, and to consider methods of ensuring that legal services are responsive to their needs.

Seniority of Counsel

The Ministry of Attorney General examined a list of the top 200 billers to legal aid in 1991/92. Of these, 120 were called in 1980 or later; 59% of criminal bills and 75% of family bills are from lawyers called in 1980 or later. The figures for those called in 1985 or later is 30% criminal and 50% family. In addition, based on tariff fees paid, there is no evidence to suggest that senior lawyers take on more complicated or expensive cases.

The legal aid bar suggests that tariff changes have resulted in more lawyers returning to the legal aid system. It used to be that legal aid work was the training ground for junior counsel, but this is seen to be changing.

A discussion with senior lawyers practising in the Vancouver suburban areas raised a concern about junior counsel taking complex cases they do not have the experience to handle well. It was suggested that the senior bar should be more involved in monitoring the legal aid practice of juniors; and that there should be a tariff mechanism to provide funding for junioring to senior counsel. Several participants were of the view that a careful approach to reviewing qualifications would help, noting that "it is crazy to assume that anybody can do anything" (and allowing for client requests and watching against arbitrary rules just based on years of call).

Recommendation:

72. The society should develop measures to ensure an adequate pool of senior counsel is available to cover difficult, complex cases, and should consider a senior tariff. The society should review these issues in consultation with all affected parties.

Paralegals in Criminal Legal Aid

Little mention was made of paralegal staff in a criminal legal aid context, and what little reference was made was negative or simply dismissive. One suspects that these services have not been contemplated because the overwhelming number of legal aid files are referred to small firms and sole practitioners, for whom paralegal functions make little economic sense.

However, for local offices and in remote communities, there is merit to experimenting with paralegals in criminal law areas. A recently published study examined the experimental use of paralegals in four northern Manitoba communities: with respect to criminal matters, the project appears to have contributed to reducing the number of appearances in criminal courts, due to improved screening and preparation work and therefore fewer remands; and resulted in about one hour less time on each criminal case by legal aid lawyers, because of efficient information collection.

For a period, the Burnaby Public Defender Project had a paralegal position who was responsible for interviewing witnesses, gathering documents, taking photographs, and otherwise assisting counsel; the person also did intake work. Former staff counsel have commented on the efficiency and value of this position.

Finally, in large centres such as Vancouver, one wonders whether the addition to the field offices of paralegal advocates to work with specialized client groups, such as native communities or the mentally ill, might divert some cases from legal aid and provide legal aid lawyers with more complete, focused information.

Recommendation:

73. The Legal Services Society should establish both urban and remote community experiments in the use of paralegal positions to assist in the effective delivery of criminal legal aid services, including assignments intended to reduce criminal legal aid intake, to reduce

the number of cases requiring lawyer service and to increase the efficiency of lawyer service through better information gathering and other measures.

FAMILY LEGAL AID SERVICES

> You have to be more than a one-trick pony to get through the legal system. - *community advocate*
>
> Family law is a never-ending melody. - *lawyer*
>
> Women are victimized all over again by their lawyers. - *community advocate*
>
> A majority of family law clients are women; most criminal clients are men; more money goes to the criminal tariff. - *lawyer*
>
> Family law service is ten years behind the social structure. - *lawyer*

Family legal aid is in a state of crisis. Serious accessibility problems are reported throughout the province. Local offices have difficulty finding lawyers willing to take any family legal aid referrals and experience delays finding counsel willing to act, even in urgent cases. There is great difficulty getting lawyers locally, especially in northern and interior communities, but also in Fraser Valley and suburban communities. Large centres such as Vancouver and Victoria report some delays in finding local lawyers. Finally, there are serious service quality concerns throughout the province.

The causes are as much inadequate service management and a reluctance to implement effective measures as they are an inadequate family tariff.

Out-of-Town Counsel

The review heard from lawyers, local offices and community groups in the following communities that family legal aid services require the use of out-of-town lawyers: Prince Rupert; Smithers; Prince George; Williams Lake; Vernon; Port Alberni; Maple Ridge; Langley; Abbotsford; Chilliwack; and Surrey. The list is this short only due to the number of communities visited. In some communities even emergency access to local lawyers is difficult.

One community (Kelowna) reported the reverse difficulty: women move to this city from other communities and have to keep the legal aid lawyers from their former communities.

These cases frustrate lawyers who: find it difficult to deal with clients via long distance telephone; find it difficult to manage adequate interview time with their clients; and frequently face adjournments because of criminal hearings scheduled earlier in the day.

Clients are especially frustrated with non-resident counsel: many are on income assistance, and cannot afford the day rate toll charges to Vancouver (and certainly not the transportation costs); many report that their calls are not returned; many do not have the education to communicate in writing; interview time is too limited and is often too close to court appearances; there are many adjournments because counsel are unprepared; and there are many complaints of lawyers late or not appearing at all for appointments or for court. One northern transition house now refers cases to legal aid only when clearly necessary.

Service Quality - Local Office and Community Experience

It is difficult to find, among local office staff or community groups which refer clients to family legal aid, very much positive to say about the quality of services presently available through the tariff. The following is typical of comments made to the review:

> From a transition house: our clients get legal aid lawyers then wait over two weeks for things to start to happen. Some are pleased with their representation; many feel disempowered. Some feel the lawyer is not hearing them. They don't feel they get enough information about the way the law works, or the reasons why some things cannot go in as evidence, so the process is not co-operative and empowering for the women. They need to be assertive, but if they try, they get resistance. Women are often frightened, feeling powerless and do not understand the jargon of the lawyers; unless someone else is with them, they do not take in what the lawyer is saying. Often the outcome is different from what they've asked for. They come out of the experience feeling that they are stupid. When cases finally get to court, they are frequently adjourned. Lawyers are scrambling in the lobby, five minutes before court, to put their cases together. They are often gruff and impatient with their clients. Lawyers need to learn to communicate! The communication that may be effective with paying clients with high esteem is not effective with legal aid clients with low esteem.

The criticisms follow several themes: inexperience; lack of understanding women's experience with the law; conflicting interests; and second class service.

Inexperienced Lawyers

> There are too many inexperienced lawyers doing legal aid; they don't seem to have training; they often do not know family law; finding lawyers willing to take and carry through family files is difficult: many don't have a lot of experience; some don't have secretaries; once they have a paying clientele, they stop taking referrals; our

biggest problem is quality of service; we receive a fair number of complaints and change of lawyer requests due to inattention to files; service is inconsistent and second class in many cases: the lawyer is unavailable, does not show, or makes clients do too much of the legwork.

Women's Issues

Women encounter situations which inexperienced lawyers seem not to believe, so the legal deals that are made are flimsy and fall apart; they want to avoid everything to do with sexual abuse allegations; they accuse us of spite; at least the Legal Services Society staff (as opposed to the private bar) understand the crime of wife assault; women coming out of marriage breakdowns face a variety of issues which the bar doesn't seem to understand or care about; some lawyers seem impatient with the emotional needs of clients; lawyers lack training in the issues and dynamics of wife assault and they minimize the severity of the problem; some lawyers lack understanding of clients; their biases show; clients can feel victimized again by the lawyer; they have no money, no status, no self-esteem, and the lawyers, especially those from downtown, reinforce that.

Women's Information Needs

Clients hear too many different messages from private lawyers, legal aid lawyers, family court counsellors, etc.; they need an information base to get quick answers to basic questions; we take time with our clients talking about how to talk to their lawyers and providing information; women get confused about who is working for them; they cannot see how to separate criminal, family and civil issues; clients are frustrated by sense that nobody is listening to them; clients know nothing about the law or terminology and it is never explained; clients often just give up.

Conflicting Interests

A number of the people we talk to feel their legal aid lawyer is not fairly representing them, not hearing them; they feel the lawyers are making deals regarding custody, support, guardianship and property that they have no knowledge of or real say in; clients are fearful of the law, often feel so low down on the scale that they don't feel they have rights; they take what they shouldn't take but feel if the service is free, they can't ask for more; the good lawyers are so overworked they cannot take more cases; with the rest, it's chance; many have done inappropriate things, such as going to an abusive partner, without his own counsel, to try to negotiate a settlement; we hear stories such as "ask for joint custody" when she wants sole custody; there have been cases where lawyers for legal aid clients have advised against use of the transition house.

Second Class Service

> We sometimes get reports that "he didn't do anything" but we have no means to investigate; family clients are not as well served as they could be; I have sense of different service provided by bar to legal aid and to paying clients; lawyers fail to request service of orders by police, so the victim has to find a delivery service or do it themselves; lawyers can be insensitive: one needed a woman's signature, so he took the papers to her place of work, which almost cost her job; lawyers complain to their clients about having to do family law cases.

Client Experience of Lawyers

The review had limited opportunity to hear from clients directly; this is a sampling:

> The lawyer didn't know who I was, or where I was from; he twice misplaced his briefcase in the court house hall and had to request an adjournment to read the file; then he mixed up my case with another and discussed it with that client.
>
> I have an out-of-town lawyer, who I met in person after nine months; it is now 16 months and there's been no action. He phones me collect, sends documents COD and I have to pay the local filing fees. I'm on income assistance.
>
> I have an out-of-town lawyer. I do not have adequate representation. I could not find a local lawyer to take my case, perhaps because my ex-husband is in the profession, so I had to go elsewhere. If you are on legal aid, you are a second class citizen in the eyes of your lawyer, the lawyer for the other side and the judge.
>
> I had four lawyers and started number five today. When I asked her how my case was going she blew up, said she was very busy and having a bad day and said my problems were more psychological than legal. So I'm back to Legal Services. Nobody in town will back you 100%.
>
> I did the research for my case; at pre-trial it was them and my lawyer against me; my lawyer agreed to their figures and cancelled the trial; the lawyer agreed to things in the order that I did not know about.
>
> When I went to my lawyer, he was in the same firm as my ex's lawyer. They put me in a room and negotiated a settlement on the spot, but then the next day forced a different settlement.

It does not matter if these statements reflect only a part of the stories. It does not even matter if the cases were indeed handled appropriately and competently by the legal aid counsel, or if the client bitterness resulted from the limitations of the justice system rather than the limitations of counsel. At the very least, the service system has been perceived to fail, even to turn against, those it was intended to help. And it has failed to adequately inform its clients, and to help them understand, what is possible for them. That is failure enough.

Lawyer Experience of Clients

The following comments are from lawyers active in legal aid work:

> The capping of preparation time is a problem, but the main problem is the volume of family law work, especially when you've got no control over your client, because there's no consequence to them taking silly positions.
>
> We spend a lot of time fighting over things that could be resolved by mediation.
>
> Family clients have little incentive to settle; need some control on this.
>
> Sometimes people are very unreasonable and don't take the advice of counsel; there is also a problem of unreasonableness in maintenance matters, often destroying settlement.
>
> Legal aid is like a charge account you do not have to pay for.
>
> Changes of counsel result from advice clients do not like.
>
> Fear of losing clients can lead to inexperienced counsel taking cases they shouldn't.
>
> Clients and counsel should be a compatible mix.
>
> Some family files give you grey hair; they're difficult and the time required far exceeds the tariff. Clients move from counsel to counsel. Clients don't understand the justice system. Some have assets but qualify for legal aid.
>
> Counsel gets stigmatized about being a "legal aid lawyer" and being referred to as such by counsel of paying clients.
>
> There's too much hand-holding.
>
> There's no disincentive to discourage frivolous action.
>
> Cases should be vetted in advance of referral regarding potentially unrealistic causes.
>
> Family law lawyers universally complain that legal aid clients have no financial stake in the service and therefore abuse the service: they don't prepare required financial statements; they use the phone too much; and they feel a contribution system would cut down

unnecessary work and give clients a stake in how much work the lawyer puts into the file.

Nevertheless, this is an issue common to family law, not just legal aid; clients are upset and emotional.

Concern about doing multiple restraining orders for those who keep going back to abusive spouses.

There are so many phone calls, so much hand-holding and dealing with difficult situations.

Family legal aid is very time consuming.

Lawyer Comments on the Legal Aid System

Lawyers were vocal respecting: client eligibility issues; the tariff rates paid for family legal aid cases; and tariff administration by the Legal Services Society. Their views are discussed more fully in sections dealing with those issues. In addition, some members of the bar expressed concern at the unwillingness of their colleagues to maintain some family legal aid files as parts of their practises. Concern was also expressed that this contributed to both reduced service availability and lawyer burnout.

Clients, advocates, referring offices and lawyers alike are frustrated with the service. All are concerned about the same issues, but experience them in fundamentally different ways. The needs which clients describe as unmet or poorly met by the bar are themselves the sources of greatest lawyer irritation. One of the observations from the consultations is that clients, together with their advocates, and the profession have little or no opportunity to discuss these issues with one another.

There is particularly good reason for this conversation to occur. The bar, community groups and local office staff have all given extensive thought to improvements to family legal aid service delivery. There are interesting points of agreement and departure.

Service Delivery Enhancements and Alternatives

Tariff Lawyers

Private lawyers, especially the relatively few specializing in family law, made strong representations in favour of an increased tariff. The tariff continues to be inadequate, although it alone does not cause all the problems.

Private lawyers in several communities suggested that services could be enhanced by the addition of staffed services, especially to overcome the lack of available local family law counsel, and to ensure emergency work such as restraining orders.

Other lawyers were interested in thinking further about the possibility that field office staff might do additional "front-end" work prior to tariff referral.

Some lawyers complained that family legal aid clients have little reason to settle and no sense of the time or cost of the service, and called for a variety of measures to impose further control, including user fees.

Referring Offices

Field offices in 12 communities called for more effective delivery of family legal services through increased staff involvement in the delivery of family legal services. They did not advocate replacement of tariff services so much as the enhancement of services and to reduce dependence on distant services. Almost all called for these services to be added to existing staffed services, all advocated a combination of lawyers and paralegals, and all saw these services as working in partnership with tariff services.

Expanded staffed services would: provide clients with more time than lawyers can provide; walk clients through family issues, the court system, and expectations of lawyers; provide interviewing and counselling in order to canvass all issues and needs; make necessary referrals to other services, clarify and focus issues requiring the assistance of a lawyer; and provide an ongoing source of support. Cases requiring tariff referral would be referred, but the office would maintain an ongoing relationship with the client and would be available to bridge any difficulties. Cases not requiring tariff referral would be handled fully by the office. Clients ineligible for lawyer services would have access to information, summary advice and self-help procedural assistance. The principle advocated is a one-stop, integrated, comprehensive service.

Community Groups and Advocates

> More time is needed with clients and for outreach work. Clients want some sense of contact, especially if children are involved. There should be a family lawyer on staff for quick advice and assistance; lawyers who do family legal aid should have some training in wife assault.
>
> An advocacy clinic for women is needed which deals with family, but also criminal and civil, issues; staffed with lawyers and advocates.
>
> Transition house: we need after-hours access for family cases, for consultation or to help get police action on a court order.
>
> We need paralegal advocacy training, based at the transition house and available to other women in the community.
>
> Perhaps lawyers should tape interviews so the client can take the tape home; there should also be a checklist for clients of questions to ask the lawyer.
>
> With a community law office nearby, I can pick up the phone and get access to information, legal advice, and to lawyers. It saves us from

having to be trained ourselves as paralegals. It's an important part of the community and very important to our clients. All our clients get lawyers; they may not be satisfied, but that has to do with the justice system. The community law office should stay open and there should be more of them.

We need access to good family lawyers who sympathize with clients; clients need to be more informed and accountable in terms of expectations of the legal system; want more male lawyers to be more aware and informed of family law issues.

Transition house: we would like to have an advocate to monitor court activity.

There is need for help with uncontested divorces; the do-your-own kit is too complicated; try group education or train someone to assist people. Also assist those who are not eligible for legal aid and who are victims of violence or sexual assault and who wish to sue, as they have difficulty obtaining counsel. Need a paralegal for family law work before referral to the tariff, to provide support and help to focus issues.

Transition house: we do most of the paperwork for the lawyers: histories, financial statements.

Lawyers should refer cases to community counselling and advocacy resources, who can help women get clear on right processes and help empower them. We need a resource for research and paperwork. Legal Services Society gives information on the process on the back of the application form, but so many clients are semi-literate, they cannot read it. We all know who's on legal aid and who's paying their own bill; we can go into court and observe: how the client is approached by counsel, the time spent, and the conduct between client and lawyer. If lawyers are going to take family legal aid, they have to take on the counsellor role; if they won't, don't take the cases.

The system needs to be sensitized to ordinary people; women do not understand the police/crown/court process. Many are semi-literate: their reading, writing or comprehension skills are insufficient to deal on their own with courts; plain language is extremely important.

We would like a specialized family law clinic; it would enhance multi-disciplinary interaction; it should not take the place of our community law office - but just expand it.

Family clients have urgent needs, and are upset, but there are few lawyers available and they get burned out; need to promote use of family court counsellors.

Suggest a family law clinic: coverage to include nearby communities and several reserves; there's a Supreme Court registry and sitting; the

> needs here are urgent - high violence, high child abuse, and in demographic terms we are at high risk for family violence.
>
> We want a family law clinic for drop-ins and appointments; would provide local resource, knowledgeable, experienced, positive; must have expertise working with abused women, the effects of abuse on children, and be culturally sensitive; should have lawyer and paralegals; would need immigration knowledge; attend all court appearances; help to fill out forms, affidavits, provide interpretation; would also cover nearby community on regular basis; the transition house should also be funded for advocacy, but linked to the clinic for legal supervision; women's services to be represented on board or advisory committee.
>
> Many of our clients are ESL. There's a problem getting restraining orders on short notice. There are few places women can go for ongoing support in the resolution of their legal issues; we fear that single mothers are falling between the cracks: with no-show lawyers and referral to hard-to-access Vancouver lawyers. We need more staff lawyers and support staff. The Legal Services Society lawyers work all day, then we meet them at meetings in the community at night. Maybe we should have a community law office, with specialized family lawyer and paralegal functions.

Cultural and Language Issues

Many community group representatives called for better information and education services. Most communities identified the need for: material written in languages other than English; greater cultural sensitivity; and cross-cultural training for those provided legal services to people of minority cultures.

Mediation

There were widespread calls for increased use of mediation in family legal aid services.

Tariff Lawyers

Consider mandatory pre-court mediation.

Provide coverage for family law mediation, particularly in cases where the value of property is small; increase the availability of family court counsellors to provide immediate mediation, especially in access disputes.

If both parties are on legal aid, demand mediation before approving lawyers.

Referring Offices

Look at more mediation to get cases out of the courts.

A lot of time is spent fighting over things that could be resolved by mediation; staff counsel are prohibited from doing mediation; clients are not given the benefit of mediation services.

Building up mediation could make a huge dent in family referrals.

Women are not well treated in either mediation or adversarial approaches.

In community consultations, while there was a great deal of interest in mediation, those employed as social workers or probation officers tended to be more optimistic. Transition house and women's centre representatives voiced caution about the validity of mediation in cases involving wife assault or abuse of any sort.

There was anxiety among all parties that mediation services must be provided by properly trained, skilled mediators. There was greater divergence of opinion, even within the bar, on the question of who could appropriately be a mediator in family matters. Some advocated the view that only lawyers who are also certified mediators should do family mediation; others looked as well to people with extensive paralegal skill, retired judges, and others of stature within the community as being suitable, but not necessarily lawyers.

Use of Paralegals

The review examined several examples of family work performed by paralegals and staff counsel:

Family paralegal - Prince Rupert

The paralegal sees all family law clients before referrals are made. She provides information; and acts as duty counsel in family court, with permission to speak in court. Most clients are subsequently referred to a staff lawyer or to the tariff. Her intent in large measure is to reduce unnecessary referrals, although data is not available to determine what proportion of cases go no further.

The court registry staff were impressed with the service. The paralegal helps to: speed the process; ensure that both parties are represented; gets clients access to resources and to get them past the first step; and interpret the courts, which are not user-friendly. The transition house staff would not want to lose this resource: the paralegal helps to overcome language, cultural and other barriers.

Family paralegal - New Westminster

Family matters have traditionally formed an important part of the caseload of the New Westminster/Coquitlam community law office. Most referrals to the office are from other social agencies, with some drop-in clients and telephone enquiries. Most do not understand their rights or options; many are uncertain what they want and few understand the law or legal terms; up to an hour or more is spent reviewing circumstances and available options; legal documents and procedures are also explained. In some cases there is more than one interview. The intent of the service is to assist clients move from uncertainty about what they wish or how to obtain what they wish to a position where they clearly know the available remedies and how to proceed. Some do not proceed further and do not make further service demands (at least in the short term); most proceed on their own to the private bar or do-it-yourself services; and those who require lawyers and are eligible for legal aid are referred to the tariff.

While there has been no statistical tracking, there are indications that this service reduces tariff referrals and that referrals themselves are more focused, enabling lawyers to work more efficiently.

Paralegal - Quesnel

The paralegal provides information (exclusive of *Divorce Act* variation orders and virtually all property issues); does some mediation; helps to draft separation agreements; negotiates on behalf of debtors with Family Maintenance Enforcement Program; and refers clients to family court counsellors and other agencies instead of to lawyers where appropriate. He sees about 40% of the family caseload intake; of these, 80% are referred to the tariff.

Paralegal - Abbotsford

Provides a similar service as the others. Agrees that her involvement prior to tariff referral reduces number of necessary referrals and helps tariff counsel since clients have already explored options and know what is open to them.

Family staff lawyer - Fort St. John

A staff lawyer was assigned to the Fort St. John branch office in October, 1991 for a six month period, since extended. Bar and community representatives all praised this decision, indicating that the service was working very well. One lawyer offered the following comment: "having him on staff doing family is a godsend."

Other Issues

The review received extensive comment respecting other aspects of the justice system and legislation. These will be reviewed in a final report.

Further Consultations

The Family Justice Review, an interministerial project, has recently produced a summary of findings from its early consultations. A synopsis, with comment, is provided below. The patterns of comment share great similarities with the findings of this review.

There are informal indications that the Community Panel reviewing the *Family and Child Services Act* has also heard similar views.

Finally, similar comments appear in the recent report of the Task Force on Family Violence, summarized below.

The review met with the Association of Legal-aid Lawyers and with representatives of West Coast LEAF Association. Both groups cautioned against staff systems with respect to service quality and choice of counsel. The latter is addressed more completely elsewhere in this report.

The review also received suggestions for additional research respecting the delivery of family law legal aid services.

Recommendations:

74. Family legal aid services must receive greater priority. Action is necessary to address the widespread dissatisfaction with the accessibility and quality of present services. The family tariff should be increased.
75. The development of appropriate models of service delivery is a task which must be shared by the society, the family bar and community-based agencies, including both local offices and groups which provide advocacy services for those who need family legal aid.
76. Advocacy networks, such as transition houses and multicultural service agencies, must be seen as part of the service system. The society should at the very least extend to these advocates training and legal supervision services and should partially fund them.
77. Local offices must do much more than eligibility assessment and lawyer referral. Staffed and tariff services must work much more closely together. There should be a bridging process between intake and lawyer referral. Lawyers should not carry all responsibility for client emotional support, consideration of needs and options, or the provision of basic information. Cases should generally be referred to lawyers once they can be acted on in an efficient manner; other supports should be maintained while the lawyers deal with urgent matters. A preliminary review and screening process should be provided by local office staff and the office should remain involved with the client throughout the process.
78. The use of paralegals in providing family law service should be significantly enhanced, both to support and assist the work of lawyers and to handle work which does not require lawyer involvement.
79. Both tariff and staff counsel are appropriate mechanisms to provide family law services; the balance between the two will necessarily vary

among communities. Effective consultation between bar, local offices and knowledgeable advocates should be sufficient to direct what will work most effectively.

80. The society is urged to develop a mediation capability in family matters. This resource should be tied to, and controlled by, local offices, and it should be used before lawyer referral. Caution should be exercised in determining who should act as mediators on what issues: many situations clearly call for legal training and skill; however, lawyers are not essential in all cases. Mediation should not be used where violence or significant power imbalances are factors.

81. There is an urgent need for the legal services system to respond to the legal needs of women and children. The society must be much more creative and flexible in its assessment and delivery of family legal aid. Further research is desirable but must not become an excuse to maintain an unacceptable status quo.

Family Justice Review

The review notes the work of the Family Justice Review, and particularly its summary of workshop comments from July 2, 1992. The themes reported are as follows:

- The need to have family law issues dealt with in a coherent, non-adversarial system located outside of the current court system.
- The need to resolve custody and access issues in the best interests of the children.
- The need for children to receive adequate and regular financial support.
- The need for the system to understand the dynamics of family violence and the unique impact it has on family breakdown.
- The need to change societal attitudes about divorce, child support, power imbalances in relationships and other issues so that we can promote healthy families.
- The need to review some government policies and programs seen to affect families.

The detailed comments respecting the justice system, lawyers and legal aid services parallel closely client, local office, advocacy group and some lawyer comments to this review.

Similarly, calls for change mirror the suggestions made with respect to legal services.

Discussion

There are some concerns which need further attention by government.

Service systems dealing with client rights and advocacy for client interests must: be designed on the basis of client need and interests; be separated from government regulatory, investigative or income support services; and provide ready access to independent advice and representation to each affected person.

There needs to be a clear distinction between justice services and social services. The two are a poor mix.

Example: Family maintenance workers of the Ministry of Social Services provide a useful, needed resource. They cannot be perceived as able to provide independent service for clients while located in that ministry.

Example: In apprehension cases, are the best interests of the child taken into account if the child is not represented by independent counsel?

There is growing pressure to replace courts with mediators, remove judges and lawyers from the process, and institute a less adversarial system. While these are positive directions, there are dangers that call for great care.

The legal services review was cautioned by a number of family lawyers and transition house/women's centre staff that mediation is not appropriate where violence or abuse has occurred; they also cautioned that power imbalances may undermine the interests of women in a mediation approach as much as they are seen to do in the adversarial system.

There is good argument that the present environment of our courts is inadequate. Women who report "feeling like criminals" in family court matters are to be believed. However successful less adversarial methods become, the courts will remain necessary. Continued attention is needed to improving the climate of family courts, the priority given to family matters in the court system, and the resources available to the courts.

If we move towards mediation for a significant share of family cases, to whom are mediators accountable for their expertise, their procedural fairness, their own independence? Will they be accountable to government; to those who pay the bills? What about the lay tribunals suggested in the Family Justice Review report, which appears to be an arbitration, rather than a mediation, system? Are we really creating a new level of judiciary?

There will be extensive disagreement about who can qualify to act as a mediator. Non-lawyers? What standards? What accountability? What regulation of practice?

Finally, there needs to be more work done on the question of what work can and ought to be done by non-lawyers, and who supervises that work.

Report of the Task Force on Family Violence

Several recommendations in the report have implications for the Legal Services Society.

The task force emphasizes process concerns, asserting that front-line workers, those who are affected, and those who are particularly discriminated against should be involved in planning, decision-making, evaluating and implementing programs. A similar theme was heard from practising lawyers, staff and boards of local legal services offices, and community groups and advocates who contributed to this review.

The report called for community-based public education, with which the society is experienced, including information on the issue of family violence.

The report asks government, in consultation with the community, to:

- encourage and fund the development and implementation of a model(s) to provide information, support, protection and advocacy for women and their children who are victims of family or sexual violence and are involved in custody and access disputes;
- increase funding for legal information, advocacy and representation for victims of family and sexual violence; and
- increase the family law legal aid tariff to allow adequate compensation for lawyers handling family law cases, and for family law cases involving the use of an interpreter.

The report also notes that while refugees can obtain legal aid for representation at hearings, the other legal needs of immigrants and refugees are not being met. The lack of funds for interpreters discriminates against those for whom English is a second language.

Appended material to the task force report includes: a call for family law legal aid cost-sharing to be administered by the Department of Justice rather than through the Canada Assistance Plan to ensure that national standards apply and that accountability is subject to Justice Department auditing and control; a recommendation for Attorney General funded advocacy centres to assist victims of wife assault, and for the Legal Services Society to provide duty counsel to assist female survivors of assault; to increase the legal aid tariff; to inform and train legal aid lawyers regarding wife assault; and to ensure a larger proportional share of resources to family services.

CIVIL AND ADMINISTRATIVE POVERTY LAW SERVICES

Consultation Comments

Private bar

Few lawyers in private practice referred at all to issues of civil or administrative poverty law. Service needs in this area were acknowledged by the Association of Legal-aid Lawyers.

Community

Disability advocates: we need help in rentals discrimination where mental handicap is an issue; we need information about mentally handicapped clients as viable witnesses; problem of security deposits in rental housing – no access to rent review and the Ministry of Social Services is getting stricter with its clients.

Lay advocate: we represent people at *GAIN* and UI appeals; this requires specialized knowledge, and we do it at little cost; lay advocates and paralegals can be more knowledgeable than lawyers; Legal Services Society referrals to us helps them concentrate on other things; we rarely need a lawyer for our work; we ease economic stress and reduce the risk of crime; if we didn't exist, Legal Services Society couldn't absorb the work, and clients would lose their entitlements.

Anti-poverty group: Legal Services Society staff come in weekly to talk to us about civil matters, such as landlord/tenant.

Community social planning council: people seem not to know of the availability of service through Legal Services Society; local agencies try to pick up the slack; new area directors seem not adequately trained or knowledgeable; Legal Services Society staff (from nearest office) have done only one *GAIN* tribunal here in the last year.

Lay advocate: because of our work, people are now more likely to have their Ministry of Social Services entitlement requests approved; class actions should be possible through a proper clinic system; our advocacy follows as more social work style: rather than doing things for people, we teach a lot, provide skills, go to lawyers with clients, and help them to speak articulately.

Community group: do not forget advocacy by non-lawyers – need more funding; many legal issues facing the poor do not need lawyers.

Mental health worker: the local community law office helps with *GAIN* for handicapped applications, as does the Coalition for Persons with Disabilities; they need to be supported; community mental health clients have changed: they are younger, less complacent, less institutional; they face more minor charges, more tenancy issues, and are also victims of violence.

Community group: we have inadequate poverty law services; the system needs a better focus on poverty issues; our local office should have a staff lawyer for non-tariff work; we should not be forced to use volunteers to do advocacy.

Community group: our community needs more access to legal services for people on welfare.

Transition house: we have UBC law student clinics; this is inadequate; it helps the students but is insufficient for clients.

Area manager, Ministry of Social Services: when legal services lawyers chair *GAIN Act* tribunals, I am happier with the results, in that there's confidence that the act and process are addressed properly, with less recourse to emotion and bias. It is rare to have to use Section 34 (appointment of chair by the court).

Branch Offices

Civil non-tariff work is not delivered consistently throughout the province; eligibility is discretionary and arbitrary; and service is inaccessible in many communities.

We are involved in supervising advocacy groups.

Headquarters wants us pushing towards community law, and to ensure we're part of the community; our clients normally have a variety of problems beyond legal problems and we should not think narrowly as lawyers, but should consider other needs.

Add a paralegal, please, for more poverty law and better service to outlying communities, and for more information and education work.

Our office does a lot of non-tariff work for the whole region; our failure to provide adequately for civil work continues to be disturbing; some civil work deserves a higher priority than some criminal work; commitment to non-tariff problems needs to be kick-started; include the private bar: need a tariff or maybe a flat honorarium.

We're able to provide a reasonable level of coverage in this community; a successful tribunal respecting a widow's pension has long range stakes which are more important than those affecting the second-charge impaired driver.

There are economies of scale available in a clinical approach to poverty law: paralegals can do intake, prepare affidavits and court documents; clients can be seen right away; expand poverty law work; boost use of paralegals; could expand the tariff to cover civil and administrative issues; there's a limit on available staff time and expertise for complex civil litigation.

Community Law Offices

We would like to see more coverage for matters such as foreclosures and judicial review, which are now done pro bono.

We want to see more advocacy regarding the *GAIN Act*.

Some of the civil work that we do, private lawyers wouldn't do at all; you'd have trouble selling the bar on a civil tariff; expand community agency advocacy programs and advocacy training.

Not enough resources are allocated to civil work; almost daily we need a lawyer for non-tariff items, and we have to seek as far as the Burnaby branch office.

Access for administrative tribunals varies from one office to another; people should have consistent access, and this service should be as important as criminal or family issues; should look at tariff access for some long, time-consuming cases; must have citizen involvement, and more integration of services, including between lawyers and community law offices, more communication; the community law office has the time to handle people in acute distress – this aspect of the service is undervalued; augment, adequately pay, and provide statutory recognition to paralegals and community advocates.

Discussion

Poverty is normally accompanied by a high level of dependence on the administrative decisions of a variety of government authorities.

Administrative agencies follow policies and procedures which are necessarily less rigorous and more discretionary than, for example, the rules which protect persons in court. Clients of these agencies are often among the least skilled to fully understand the rules or assert their rights to either entitlement or proper process.

Assistance to help persons who are poor and disadvantaged remains the least developed and least accessible of all the components of legal aid services.

Those services which do exist provide the most cost-effective assistance of the entire system.

Availability of Service

Service is available in those locations in which there are staffed offices of the Legal Services Society, community law offices or native community law offices. In addition, a number of anti-poverty and other community-based organizations employ lay advocates.

No tariff is available for civil matters; in a limited number of cases, disbursements are covered by the society for lawyers who act on a pro bono basis.

Service is not available on a geographically equitable basis. Significant areas of the province, including remote areas, small cities and the largest urban areas, are seriously under-serviced.

The mix of staff resources also varies widely: some branch offices have staff counsel but no paralegals; some community law offices have paralegals but no lawyers; some native offices are one paralegal located in a friendship centre.

Some services are funded by the Law Foundation, formally outside the legal services system.

The *Legal Services Society Act* and its predecessor legislation anticipate and provide for coverage of civil and administrative matters. However, for almost 20 years this area of service has maintained "third cousin" status.

Coverage

Society policies contribute to spotty and inconsistent service coverage.

Community and native community law offices follow service priorities set by local boards, in response to local community needs.

Branch office staff are provided wide personal discretion in setting their priorities; indeed, only in the last two years were they encouraged to establish annual service priorities. Branch offices are instructed to give priority to "urgent" cases, defined as affecting "the liberty, physical or mental safety or health, or livelihood of an individual."

No core service standards exist to ensure client access to adequate basic levels of service throughout the province.

Needs

A legal services system which does not provide an adequate level of civil and administrative law coverage is failing the very people whom the system is supposed to benefit. Any needs assessment, from a client perspective, must place these areas of law at least equal in importance to family law, and substantially more important than criminal law.

This applies numerically since, for example, there are far more people in receipt of welfare, unemployment, compensation or pension assistance than receive criminal legal aid. Severity of consequence can also be greater; for example, the long term repercussions of a worker's compensation case can be more significant to the client than many criminal charges.

These comments are not intended to argue a hierarchy of need, but only to urge that the legal services system place appropriate emphasis on civil and administrative law services.

Service Model

Despite the historic inadequacy of services, there is a lengthy history of success in developing effective service models.

An ideal model would be a staff lawyer assisting and providing legal supervision to paralegal staff; close collaboration with and legal supervision of lay advocates in community or self-help groups in the community; access to a limited civil tariff for cases requiring particular expertise; and a priority-setting process set by the local board to ensure community accountability and responsiveness.

Variations on the model are available: for example, the Victoria Law Centre and Community Legal Assistance Society in Vancouver make substantial use of law student clinics; the latter also does a variety of test cases and has additionally negotiated government agency policy change as an alternative to litigation. Victoria also utilizes a full-time social worker on its staff; other multi-disciplinary variations may be helpful.

The typical cases allow for highly flexible service response: some clients simply require summary information; some are able to pursue their own cases, equipped with information and procedural assistance; many cases can be properly resolved for the client by informal advocacy, often by telephone; and many cases requiring administrative tribunal hearings can be effectively handled by paralegals or lay advocates.

Valuable lawyer time can be split between those relatively few cases actually requiring counsel and supervising and assisting the paralegal staff. A highly productive office results.

Services are best provided in non-threatening, accessible environments, with drop-in capacity. Information, and preferably service, should be available in languages commonly spoken in the service area and at the very least with cultural knowledge and sensitivity. Service must be provided in plain language, with care taken to ensure that clients understand what is occurring. Self-help approaches should be used wherever reasonable.

Recommendations:

82. The Legal Services Society should immediately implement measures to improve the availability of service in the civil and administrative

law areas, particularly through the addition of staff lawyers and paralegals to existing offices; and through the replacement of a number of area directorships with staffed offices.

83. The society should ensure a policy framework and resource allocation strategy designed to ensure that civil and administrative law receive their appropriate share of resources and that service availability is consistent throughout the province.

84. The society should develop a limited tariff for difficult or especially time consuming civil and administrative cases, to be used at the discretion of local offices.

85. The organizational, staffing and service delivery models established by the community and native community law offices provide an effective base for improving civil and administrative law services.

Other Services

Concern was expressed by lay advocates and community offices that the Workers' Advisors of the Ministry of Labour, which offer assistance to people in Workers' Compensation Board cases, are inadequately available in the province and are not sufficiently independent. It was further suggested that responsibility for this service be transferred from the Ministry of Labour to the Legal Services Society. This would address the independence question and would establish the resource within a more comprehensive provincial legal advice system than at present.

Pressure on service providing ministries for advocacy funding is increasing. If advocacy services are to truly benefit clients, more than funding issues must be addressed: consideration must be given to the independence, qualifications, training, and effective legal supervision of advocacy services. It is neither practical nor appropriate for service providers to both fund and directly control advocates whose jobs will be to challenge those ministries in the interests of clients. Increased levels of public funding must be matched by increased public protection against incompetent advocates.

Advocacy areas which should be considered include: child and youth case advocacy respecting children in care or in youth correctional programs; welfare rights advocacy; tenant advocacy; human rights advocacy; long term care patients advocacy; advocacy respecting other vulnerable persons, especially those in the residential care of the province.

An earlier recommendation addresses this concern.

YOUNG OFFENDERS ACT LEGAL SERVICES

It was not possible to complete a thorough review of legal aid services for young persons charged under the *Young Offenders Act*. Further discussions are recommended with practitioners, judges and agencies working with a young offender clientele.

There were calls for enhanced use of alternate measures programs.

Some communities also indicated concern that adjournments of cases elongate the time between charge and finding, with the potential for undermining a youth's ability to connect offence and consequence; to an adolescent, a month can seem a very long time.

Many lawyers, local offices and community groups drew attention to the process by which youth receive court-appointed counsel under the act, resulting in free legal service for the children of the well-off. While no one objected to the right of young persons to independent counsel, all lamented the way in which responsibility can be avoided. The ease with which parents can have the public purse pay the cost of lawyers for their children in youth court is hardly an appropriate message to these youth. This problem may be with the legislation, rather than its administration; discussion with the federal Minister of Justice may be in order.

Recommendation:

86. The government should review the *Young Offenders Act* and practises respecting court-appointed counsel for youth, especially those who reside with their families and where the families are financially well-off, and either propose changes to administrative practice or recommend legislative changes to the Government of Canada.
87. Consideration should be given to specialized services in family and youth matters, including service to youth charged under the *Young Offenders Act*, in correctional programs and in care of the Superintendent of Family and Children's Services.

IMMIGRATION LEGAL SERVICES

In metropolitan Vancouver, there is an active private bar doing immigration and refugee work. It has accumulated considerable expertise in recent years and has developed national networks. The bar is highly resistant to any suggestion of clinical programs. It was not possible to complete full exploration of service needs with community agencies, although they are concerned that high quality service be available in this very specialized area of law.

In Victoria there appears to be little private bar experience because of a relatively low volume of cases; the Law Centre put forward an idea for a small clinical program to develop local expertise.

There are few cases elsewhere in the province. Fraser Valley communities reported considerable concern about immigration issues, but the volume of cases was unclear.

The Legal Services Society data was reviewed. Since a tariff was created, the caseload volume indicates financial opportunity for clinical services. It is necessary to examine more thoroughly the geographic distribution of cases, the possibility for volume driven efficiencies on translation and interpretation costs, and the likelihood of a clinical service quickly achieving expertise.

HUMAN RIGHTS LEGAL SERVICES

A tariff is administered by the Legal Services Society by arrangement with the B.C. Human Rights Council; this is available to all without a test for financial eligibility. Local offices and some community organizations are also active in assisting clients with human rights complaints before either the council or the Canadian Human Rights Commission.

During the consultations, several references were made to the provision of service for human rights cases. Two lawyers called for a substantially improved tariff, which is presently well below the rest. Two lawyers called for imposition of a means test to counter what they saw as "nuisance" cases against which respondents had to pay their own counsel. Community groups commented on the small number of lawyers willing to take cases and on the relative difficulties gaining access to expertise in many parts of the province.

A consultation was convened in Vancouver attended by several lawyers active in human rights cases, together with several community groups with particular human rights interests. From this discussion, the following consensus emerged:

> Resources are needed for groups who require recourse to human rights legislation to build lay advocacy and self advocacy approaches. Funds are needed for training programs as well as for some staff support.
>
> Staffed, community-based services, with lawyer and paralegal components, are required; at least one Vancouver-based centre is necessary. It should be connected to the provincial legal services system and community advocacy networks in order to provide expertise to local offices and communities. It would also work closely with the tariff bar, including provision of non-legal client support, research and preparation, and other assistance to counsel.

An active tariff bar is needed; and an adequate tariff is essential. One lawyer provided a copy of a detailed bill respecting a complex case for which the tariff covered only a small percentage of the actual costs.

To the extent that these service elements work together, service to clients can be maximized and costs best controlled.

Recommendations:

88. The tariff for human rights cases should be established at a level comparable to other legal aid tariffs.
89. A Vancouver-based human rights resource should be established, or contracted with an existing agency, to provide specialized client service, work with the private bar and be a provincewide resource.
90. Assistance with advocacy training, legal supervision, information services and funding should be available to human rights advocacy organizations, in a manner similar to that proposed in civil and administrative matters.

PRISONERS' LEGAL SERVICES

The provision of legal services to prisoners is concentrated in two locales: the Prisoners' Legal Services office in Abbotsford and services provided by the Victoria Law Centre.

Representations were received only from the Abbotsford office and from one lawyer who works with them. They propose tariff coverage for prison and parole hearings. They feel tariff services are preferable to staff services to provide more exposure within the legal profession to prison environments and issues and to counter concern that a staff model might get in the way of prisoner/prison staff difficulties.

They also anticipate increased numbers of detention hearings, post-supervision hearings and disciplinary courts. The Ontario and Quebec legal aid plans have always covered these matters.

The Prisoners' Legal Services office also proposes the creation of a provincewide board to oversee the delivery of all legal aid services to prisoners in the province. This office would form the nucleus of a system that would include satellite offices in Prince George, Kamloops, Victoria and a specialized staff position to serve the Willingdon Youth Detention Centre.

The review was unable to consult more widely respecting this proposal. It seems apparent that this is a highly specialized service which may require the particular attention suggested. There is certainly merit to a service strategy which increases professional knowledge of prison issues. And choice of counsel may be essential to ensuring the trust of people in custody. A tariff therefore makes considerable sense. While there may be a need for service to incarcerated young offenders, it is not clear that it should be located in this resource, rather than in a specialized service focused on youth. Finally, the Victoria Law Centre's views should be solicited respecting the structural proposal, as it does some prison work.

The Legal Services Society is encouraged to explore the Abbotsford proposal more closely and to ensure that services are adequately available.

DUTY COUNSEL AND COURTWORKER SERVICES

Duty Counsel

The Legal Services Society should carefully review its standards for the delivery of duty counsel services. The review consultations found evidence of some difficulty.

In at least one community, Penticton, duty counsel is not provided. Instead, if someone is in custody, the local office is informed and a tariff lawyer is contacted to handle the case. This is claimed to work adequately, but does not appear to meet established service expectations.

There were several calls for staff counsel to participate in duty counsel work, in the same manner as for participation in court work: it offers a way to see what is happening in the courts and among tariff counsel.

In larger centres, it may be financially advantageous to have most if not all duty counsel work handled by staff lawyers.

Local offices and courtworker agencies expressed some frustration at duty counsel services, including:

- no-shows: scheduled lawyers not appearing;
- trading: lawyers swapping schedules without informing the local office; this becomes very difficult when a lawyer does not appear;
- inadequate service to non-custody clients; and
- some examples of excessively hasty service, including getting client identities confused.

A number of staff and private lawyers, and others, also criticized the use of duty counsel work under the tariff as a means of generating further tariff referrals. Many felt this was not an appropriate time or place to hand out business cards. Some lawyers feel that duty counsel rosters also result in clients being "stolen."

Courtworkers

Courtworker services were not reviewed specifically, but a number of concerns arose in the course of the consultations.

Some lawyers criticized perceived bias by some native and other courtworkers in advocating referral to some lawyers and not others. These views were acknowledged by several courtworkers and either dismissed as inaccurate or defended on the basis that clients are entitled to the views of the courtworkers respecting lawyer suitability. A branch of the Elizabeth Fry Society also defended the practice of courtworkers speaking to sentence for those ineligible for legal aid, even though they had been accused of "stealing clients" from the bar.

One local office questioned the value of having Salvation Army representatives hand out and assist with the completion of legal aid application forms, since they have no authority to verify or approve them.

A native courtworker stated that lawyers use him to help them communicate with clients.

There were several calls to provide courtworkers with the ability to undertake additional duties in court, including small claims hearings.

Courtworkers are important and under-recognized resources who contribute to the delivery of legal aid services and to public comfort with the court environment. The review heard many comments about the relative strengths and weaknesses of courtworkers; there appeared to be a direct link between their seniority, training and experience, and the respect afforded them among lawyers and local offices. At their most effective, they are highly regarded.

The Legal Services Society and the province are advised to examine further the potential role of courtworkers and to further strengthen existing services.

COMMUNITY AND JUSTICE DEVELOPMENT ISSUES

The inclusion of community and justice development roles in the delivery of legal services has been a long-standing and somewhat controversial practice. While actual work seems to have been inconsistent over the years, the staffed services continue to consider it important.

Community and native community offices have always maintained that community and justice development are important components of their service. They have not always remained as active in this work as they would have liked, usually because of the press of casework. However, they point to a number of benefits, including: the building of self-help and social development resources and skills in poor and disadvantaged communities; the promotion of public policy and law reform, informed by casework; and the interests of client constituencies.

Several examples will serve to demonstrate the range of activity brought to the attention of the review.

The paralegal located at the Fort St. John Friendship Centre described her role, in addition to assisting individual clients, as follows: assist non-profit groups to deliver related services, including assistance to incorporate and prepare constitution and bylaws; train people to run meetings, to set up and maintain accounts, to prepare for audits; assist people to develop organizational skills; and assist groups with property purchase, regulatory matters, designing funding proposals, etc. Her intent is to expand the scope of what one position can do and to empower poor communities to pursue their own social and other development goals.

The Doug Traill Memorial Law Centre in Nanaimo has maintained an active profile in community development work. It has: lobbied local and provincial governments on housing policy; participated in municipal committees on issues such as housing and social planning; participated in campaigns to promote increases to social assistance rates, increase minimum wage levels and stop the forced employment of single parents on welfare; and supported a local campaign to establish a school meal program.

Vancouver-based Community Legal Assistance Society continues to utilize its large caseload base, through the UBC law student clinics, to identify issues that will result in test cases handled by staff lawyers. It sees a role for court decisions to achieve improvements to rights or benefits to the poor and disadvantaged. It also remains active in appeals of administrative tribunal decisions. Community Legal Assistance Society has also had some success with convincing authorities to negotiate policy changes as an alternative to litigation.

A number of local offices provide legal support to advocacy groups. The Surrey staff counsel, for example, have initiated outreach activity to support anti-poverty groups and have established working relationships with organizations in the Indo-Canadian community.

Provincially, the Legal Services Society has allowed community and native offices to retain their community development mandates and management has more recently encouraged branch offices to become more involved with local community groups. However, the society continues to debate this role, and its support is minimal.

The society has also not recognized its own potential capacity to provide independent data respecting the impacts on its clients of various laws and government policies, or to contribute a unique perspective to policy development in the Ministry of Attorney General and elsewhere in government.

Some elements in the service system and in the legal profession see this work as unnecessary and not properly within the mandate of a public legal services agency. They question: Is it legal services? If it is, what is its priority?

Support of client constituency groups in community and justice development work is a logical and sensible extension of the delivery of individual legal services. This area of work has never occupied a major portion of time or budget. There is no need to restrict the mandate and real benefit to clients from encouraging its reasonable application locally and within the society itself.

PUBLIC LEGAL INFORMATION AND EDUCATION SERVICES

The review included meetings with representatives of the Public Legal Education Society, the Law Courts Education Society and the Legal Services Society. A number of representations were made by local offices and community groups throughout the province.

There is no need to repeat community and local office comments respecting the importance of information and education components of legal aid services, especially in relation to language and cultural barriers to understanding the law or individual rights, understanding one's legal options in family matters, overcoming the fear of "fighting city hall" in administrative matters, or even understanding the legal advice offered.

A legal services system which does not suitably integrate effective information and education services into its client services strategy will inevitably waste expensive professional resources and will not provide clients with the most effective service possible.

The society has a mandate to provide information and education resources to the general public. It may be tempting to regard these as less than essential and to sacrifice them in favour of targeted client service. It would also be ill-advised. While even the funding level proposed for the society by this review is insufficient to fully implement this mandate, the society should remain involved. This is one of the few areas of work which can expose the society to the general public and which the society can utilize to build increased public support for all its services. The society should carefully target its small public information and education resources, but should certainly maintain them.

The Public Legal Education and Information unit of the society accomplish a considerable amount of work, with favourable results, with very limited resources.

There is no evidence that this unit duplicates the work of the Public Legal Education Society or the Law Courts Education Society. They appear to provide complementary services.

The unit has not been considered part of client services management within the society. It has developed its own working and funding relationships with a variety of community service and advocacy organizations which relate to the system, but has done comparatively little with branch and community offices.

There must be greater integration of information and education strategies into client services planning and delivery. The unit must become more actively involved in overall service planning and management and must have additional financial resources.

Financial Issues

MAJOR CAUSES OF THE FINANCIAL PROBLEM

There are several causes of the present financial crisis:

- long-standing underfunding for legal services;
- expanded financial and coverage eligibility criteria;
- increases in tariff rates, effective June 1, 1991;
- increases in the volume of cases; and
- inadequate and uncreative management.

Financial Background

Until the financial year 1989/90, the Legal Services Society had never accumulated an operating deficit of more than $2 million in any one year.

In 1991/92, the society faced a deficit exceeding $4 million and had very little room to manoeuvre. This position arose due to the doubling of tariff rates and an extraordinary increase in the number of applications. An additional $20 million deficit or more is forecast for 1992/93.

Fee for Service Tariff

Adjustments to the tariff over the years have been erratic.

	Percentage Increases	
	Criminal	Family
January 1, 1979	8.0	8.0[1]
June 1, 1980	8.0	8.0
September 1, 1981	38.0	38.0
October 1, 1982	(12.5)	(12.5)
January 1, 1986	14.3	14.3[2]
August 1, 1987	25.0	25.0
January 1, 1988	0.0	32.0[3]
October 1, 1988	10.0	10.0
October 1, 1989	5.0	5.0
January 1, 1991	6.0	6.0

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[1] This was the first increase since 1973.

[2] This removed the 12.5% restraint reduction effective October, 1982.

[3] This is the balance of a phased 65% increase starting on August 1, 1987.

Source: Legal Services Society

On June 1, 1991, the tariffs were doubled. The effect of the increase can be seen by comparing fee for service expenditures for the period 1990/91 and 1991/92:

1990/91 - $27,645,178

1991/92 - $50,026,686 *

* *Covers only 10 months of the new fee schedule*

In January 1992, a restructured criminal tariff came into effect, which bases payments on the seriousness of offences, regardless of the level of court involved. It was believed that it would have a moderating effect on billings; no evidence of this had been seen by the end of June 1992.

The average payment for representation in a criminal law case was approximately $490 before the tariff increases and is now $983.

Tariff increases are the largest single cause of the society's present financial situation. The province increased its funding to the society in 1991 by $18,697,100 and the Law Foundation increased its contribution from just under $5 million to $10 million for 1991/92 only. The 1992/93 Law Foundation contribution will be approximately $4 million.

Immigration Referrals

Prior to 1990, immigration cases were handled on a pro bono basis. As a result of the decision in Gonzales-Davis v. Legal Services Society, a tariff was established. The 1990/91 and 1991/92 budgets reflected expenditures on this item but the computer system took some time to be reprogramed so the statistics do not reflect the true situation up to the fall of 1991. There was a definite increase in immigration cases as soon as they were included in the tariff. Some idea of the volume of cases can be drawn from the following figures:

	Totals 1990	**January 1, 1992 - March, 31 1992**
Total Civil Applications	25,407	7,308
Total Civil Accepted	5,236	2,061
Accepted Percentage	20.6	28.2
Total Immigration Accepted	192	750*
Total Immigration Referred to the Bar	104	720*
Percentage of Civil Accepted which involved Immigration	3.6	36.4
Percentage of Immigration Accepted referred to the Bar	54.1	96.0

***At this quarterly rate, 12 month totals would be approximately 3,000 applications accepted to 2,880 referrals to the bar.**

The current average cost of an immigration case is $1,458.

Most immigration applications originate in the lower mainland.

Top Two Hundred Legal Aid Billings

A review was conducted of actual tariff billings for the period August 28, 1991 to February 26, 1992; these figures were projected to an annual basis. All billings were at the rates which came into effect on June 1, 1991. The results of the review are:

- the average billings of the top 200 were $158,849;
- the average billings of the top 50 were $234,615;
- the highest billings from one lawyer were $363,730 for criminal cases;
- the highest billings from one lawyer for family cases was $321,800;
- seven lawyers had billings of over $300,000;
- twenty-seven counsel had billings of between $200,000 and $300,000; and
- the total criminal billings for the top 200 billers came to $23,124,021 while the same group of counsel had family billings of $8,645,693.

Comparison - Top One Hundred Criminal Law Billings 1989/90 and 1991/92

A comparison of the top 100 criminal law billings for the period mentioned above, and those for 1988/89, revealed the following:

	1989/90	**1991/92***
Top billings	$112,101	$363,730
Lowest billings	30,552	116,030
Average per referral	302	983

* *Annualized*

The lowest billings of 1991/92 are higher than the top billings of 1989/90. The average cost per case handled by the top billers has tripled. The lowest billings represented about 118 cases annually in 1991/92, up from 101 cases in 1989/90; the highest billings represented about 370 cases annually in both periods.

BUDGET - 1991/1992

Income

Source	Amount	Percentage of Budget
Province of B.C.	$50,652,544	81.4
Law Foundation	10,000,000	16.0
Notaries Trust	1,121,100	1.8
Interest	292,553	0.5
Client Contribution	120,502	0.26
Publications	15,944	0.02
Miscellaneous	13,635	0.02
TOTAL	**$62,216,278**	**100.00**

Notes:

The province initially allocated $37,973,940 to the society; special warrants subsequently dealt with the tariff increase and additional expenditures.

There are cost-sharing agreements between the federal and provincial governments. For the financial year 1990/91, the federal contribution was $16,636,217. Proceeds are credited to general revenue.

In July 1991, the Law Foundation raised its contribution to $10 million for one year to cover the additional cost arising from the major increase in the tariff fees. For the year 1992/93 the Law Foundation contribution will decrease to $4 million.

Expenditures

Source	Amount	Percentage of Budget
Client Services	$8,578,477	13.21
Legal Information Services	1,602,258	2.46
Native Programs	1,936,336	2.98
Administration	2,423,265	3.73
Planning and Research	98,051	0.17
Pension Plan	24,085	0.05
Post and Communication	209,000	0.32
Fee for Service	50,026,686	77.08
TOTAL	**$64,898,158**	**100.00**

Note:

The above amounts are still subject to audit. A deficit of $4.3 million is recorded as being a reserve for tariff expenditures.

Income - Comparison	1990/91	1991/92	Percentage Change
Source			
Government of B.C.	$31,955,444	$50,652,544	58.5
Law Foundation	4,900,000	10,000,000	104.1
Notaries Trust	1,209,346	1,121,100	- 7.3
Interest	844,566	292,553	-65.3
Client Contributions	96,596	120,502	24.7
Publications	15,630	15,944	2.0
Miscellaneous	7,256	13,635	87.9
TOTALS	**$39,028,838**	**$62,216,278**	**59.4**

Expenditures - Comparison	1990/91	1991/92	Percentage Change
Source			
Client Services	$7,665,451	$ 8,578,477	11.9
Legal Information Services	1,500,842	1,602,258	6.8
Native Programs	1,688,672	1,936,336	14.6
Administration	2,215,410	2,423,265	9.4
Planning and Research	105,535	98,051	- 7.0
Pension Plan	0	24,085	0.0
Post and Communications	171,000	209,000	22.0
Fee for Service	27,645,178	50,026,686 *	80.9
TOTALS	**$40,992,088**	**$64,898,158**	**58.3**

**Fee for service rates were doubled on June 1, 1991. The accounts showed deficits at the end of each year for tariff expenditures. The amounts were - $1,453,757 (1990/91) and $4,135,637 (1991/92).*

BUDGET - 1992/93

The budget being utilized by the Legal Services Society, and current as of July, 1992 is as follows:

Income

Source	
Province of B.C.	$71,511,940
Law Foundation	4,000,000
Other	1,500,000
TOTAL INCOME	**$77,011,940**

Expenditures

Source	
Client Services	$10,180,880
PLEID (L.I.S.)	1,800,133
Native Programs	2,545,810
Administration	2,998,667
Planning and Research	148,464
CLO/NCLO Pension Plan	120,000
Post and Communications	300,000
Provision for Reorganization	500,000
B.C. Assoc. of CLOs	77,734
Review Panel Pilot Project	105,405
Forensic Psychiatric Institute Project	73,383
TOTAL FOR DEPARTMENTS	18,850,476
FEE FOR SERVICE	78,805,000
TOTAL EXPENDITURES	97,655,476
Operating Deficit	(20,643,536)
Deficit at beginning of year	(4,300,000)
Projected deficit, Mar 31,'93	(24,943,536)

Notes:

This budget assumed that no cases would be transferred to staff clinics. It also assumed annual volume increases of 20% from October 1991 to March 1993. The society has upwardly adjusted the 1991/92 deficit.

The review is not at all satisfied that these figures reflect the likely year end position of the society; without a sudden and significant drop off in service demand, fee for service costs can be expected to increase further. Total expenditures will almost certainly exceed $100 million, resulting in an accumulated deficit exceeding $30 million.

CASH FLOW ISSUES - 1992/93

The voted allocation to the society by the province was $71.5 million. No service delivery or other changes have yet been made. The society is spending at an annualized rate of $98 million. Cash is provided monthly on the basis of the voted allocation. A cash flow crisis is looming, likely by early fall 1992.

Rumours of bankruptcy have circulated among the bar for several months, some believing that the government might let this occur.

Short term solutions are not available. Tariff billings since April are already paid. Bills for tariff referrals already made will not be received for several months. Billing lags are an important factor in its finances; shifting direction is comparable to turning a large ship at full speed.

Nor are there remedies within the budgeted allocation. Steep tariff cuts would be needed to result in significant savings this year and would be met by the opposition of the entire legal profession and another strike by the tariff bar. Staff system cuts would be similarly drastic and would be opposed by groups representing the poor and women, among many others. Restricted eligibility would join bar and community opposition. And court-mandated services in criminal and immigration matters would leave the already inadequate administrative and family services to absorb virtually all the impact.

Finally, the co-operation of the key stakeholders in the profession and the community will be required to achieve needed change. Those who perceive themselves as under attack often see proposed change as further evidence of attack, rather than a way to move forward.

The present government did not create this financial crisis; it has inherited the results of a long and complex process. Quick remedies are not available, unless it is prepared to harm the clients it most wishes to assist.

OPTIONS AVAILABLE

Over the longer term, the following options are open to get the society's financial situation under control:

- enact a more restrictive mandate;
- interpret the mandate in a more selective manner;
- restrict financial eligibility;
- restrict coverage eligibility;
- change the contributions policy;
- apply more active measures to confirm eligibility;
- rigorously detect and prosecute fraudulent applications;
- increase the audit of lawyers' billings;
- reduce the tariff;
- increase the funding allocation to reflect current costs; and
- increase service within current costs.

It is necessary to carefully weigh the financial and social impacts of these options.

Mandate

Society documentation shows that it does not presently fully comply with its mandate. One option might be the removal of the obligation to provide to the public information and advice about law, as suggested by some. This would be false economy, as the section examining service delivery problems has shown. Community agencies especially noted the link between an informed public and reduced need for the more expensive services. Service providers demonstrated that effective information and summary advice is instrumental in making the most effective use of lawyer services.

The difficulty with restricting client service is that the courts continue to mandate the right to counsel, affecting duty counsel, criminal representation and immigration matters. There is a very real danger that the family and civil/ administrative services would be the greatest victims of cutbacks – precisely those areas of greatest unmet need.

There is greater opportunity for efficiency by moving to a more flexible approach to service delivery: by improving the mix of staff and tariff services; by increasing the appropriate use of paralegal services; and by other mechanisms outlined in detail elsewhere in this document.

Interpretation

The present mandate is very broad and open to interpretation. For example, a qualifying individual has legal services made available in criminal proceedings that could lead to prison. Certain parts of the process might be excluded from the mandate. Some lawyers and others called for service denial for some offenses, such as impaired driving or "minor" narcotics charges.

However, great care must be taken to ensure fair treatment of clients and to ensure that legal aid recipients are not victimized by second class access to justice. There are practical, as well as principled, reasons to reject this option: the likelihood of further court challenges resulting in additional mandated service is greatest in the criminal law area. It should also be remembered that increased numbers of unrepresented persons will not help the courts to operate efficiently.

Maintaining a more generally defined mandate can increase service delivery flexibility without sacrificing service quality.

Financial Eligibility

Society policy is poorly written and cannot be applied in a consistent and fair manner. There is considerable scope for efficiency in writing precise guidelines which can be fairly applied, without reducing low income thresholds.

Coverage Eligibility

Society policy is again not precise and requires significant amendment, without resorting to unfair measures. It is not possible to quantify possible efficiencies.

Contributions Policy

Present user fees are essentially not collected. The $10 fee levied against income assistance recipients should be abolished. The $30 fee chargeable to other clients should be replaced by a graduated scale of contributions, designed in conjunction with amendments to the financial eligibility policy. An improved contributions policy will not generate substantial amounts of income, but will substantially enhance the fairness of the system. It was not possible in this review to design and cost a detailed plan.

Confirming Eligibility

Applicants must complete documentation showing financial status. Intake staff generally do not question the accuracy of information. Staff questioned on this matter said that they left such checking to headquarters of the Legal Services Society. Application forms include authorization to the society to carry out financial verification checks and warn against giving false information to obtain assistance. However, there is very little history of checking. Suspect applications should be pursued by the society and fraud prosecuted. While the actual frequency of fraud is likely very low, the absence of checks seems well known on the street; a certain risk of fraud charges would make the system more honest.

Tariff lawyers should be required to either report to the society, or refer the client back for eligibility re-assessment, if they learn of additional, undisclosed information or if the financial situation of the client changes.

Increasing Audits

The establishment of a new audit unit should increase the auditing of billings. Random audits should be utilized, in addition to pursuit of detected patterns or complaints. There should be certainty to the chance of an audit.

The audit function should be part of an overall monitoring process that includes computer records reviews, feedback to local offices, local monitoring by staff counsel and provision of copies of bills to local offices and clients. The goal is to develop to the greatest possible extent, a self-correcting system of checks and balances.

While the review was struck by the frequency of lawyer concern about the billing practises of some colleagues, the amount of abuse is likely very small. The measures proposed here should not be regarded as assuming otherwise: they are simply measures which should have been in place all along.

Tariff Reduction

A small reduction to the criminal tariff is proposed, with the savings used to increase the family tariff.

Further cuts to the tariff are highly problematic: the family tariff remains inadequate. While the criminal tariff is at least a competitive market rate and may lead the market slightly, further reduction means retreating from a commitment the society, with the knowledge and participation of government, entered into in 1991, and will generate a united, angry response from the entire legal profession. Strike action would be very likely.

Instead of a tariff reduction, it is proposed that the structure of the tariff be dealt with as part of a comprehensive policy on lawyer compensation paid for by the public sector, in order to prevent future erratic changes.

Tariff/Staff Services

This review proposes significant change to the mix of staff and tariff services. However, this will take time. A healthy tariff service is an essential component of that mix. And improvements to family and civil services cannot be achieved at a budget level equivalent to the current allocation.

Increasing Funding

Although the government allocation has risen dramatically, it does not reflect the reality of the agreement the province made in the settlement of the 1991 tariff strike. While this review elsewhere questions the wisdom of the decision, it is a fact, nevertheless.

It is not possible for the society to come close to the present budget allocation without severe tariff cuts or other reductions which will be felt most severely in family, civil and administrative law services, and which are already the least adequate. Either choice would result in serious professional and community opposition.

At the same time, it is possible to demand better use of present expenditures to increase service availability and quality.

Increasing Services

This review demonstrates that while it may not be possible to significantly reduce costs (without serious consequence), there are opportunities available to increase the volume, accessibility and range of services, particularly in the family and civil/administrative areas of law.

It is possible to: achieve total volume increases in the order of 25% or more; provide accessible staffed services to numerous communities without them; improve the local availability and quality of family law service; improve the availability of civil and administrative services; improve tariff and staff system management; and significantly improve community responsiveness. It is possible to do this comfortably within present expenditures, without unacceptable reductions in the amount of tariff work and without a lengthy planning process. Gains can be realized within a short period of implementation.

Recommendations:

91. Government is urged to accept that present levels of expenditure (projected at $97.6 million for 1992/93) are necessary to provide an adequate basic level of service. Cost reductions would necessarily entail unacceptably large service cutbacks, most affecting those clients requiring assistance in family and administrative law matters. At the same time, the Legal Services Society can, and must be required to make much better use of this financial allocation.
92. The government should allow the society sufficient funds in 1992/93 to meet its present commitments, implement the proposed service delivery and structural change, and complete the fiscal year without an accumulated deficit.
93. The government should legislatively prohibit the society from incurring future deficits.
94. The 1993/94 allocation should be capped at the 1992/93 projected expenditure.
95. The government should make the above financial commitments contingent on immediate acceptance by the society of the management, structural and service delivery strategies contained in this review, including the re-allocation of funds and priorities; and on demonstrated, rapid progress towards implementation.
96. The society should be required to submit work plans covering the balance of 1992/93, 1993/94 and 1994/95, to the ministry and Treasury Board, in a manner and format acceptable to them and to provide detailed quarterly expenditure, caseload and implementation progress reports.

97. A complete program and financial audit should be completed by September 30, 1994, to review workload capacity, cost-effectiveness and service quality and to review whether further adjustments are required.

Note: the financial recommendations do not account for the following:

- the outcome of consultations respecting native legal services (although some expansion is allowed for);
- any decisions by government respecting new advocacy services as recommended in this review; and
- any impact on the society of other changes by the federal or provincial governments in such areas as family law, the Criminal Code or immigration legislation.

TARIFF RATES

Consultation

Lay advocate: if lawyers aren't getting paid enough that should be looked at.

Community group: cap the lawyers with a per case ceiling.

Registry staff: the new tariff has created an incentive towards trials, in the view of some.

Staff lawyer: the more you pay, the more you worry about service quality.

Private lawyer: increase the tariff annually by the inflation rate; the 75% rule should be adhered to.

Private lawyer: up to 1991 every legal aid case cost me more and more money, and I could no longer afford to do legal aid.

Private lawyer: consider half-day and full-day income caps; put in a senior counsel rate; the tariff isn't high enough to attract good lawyers.

Private lawyer: rumour has it that the bar expects a tariff cutback instead of the public defender model!

Private lawyer: there should be parity between criminal and family tariffs.

Discussion

The criminal tariff presently provides for graduated rates depending on the severity of offences. It should be monitored to assess success in matching more senior counsel to more difficult and serious cases. If it does not do so, further review to the tariff structure and case assignment process will be required.

There are both public and private sector perspectives to be considered in determining a compensation framework.

There is considerable variation in compensation to lawyers working in, or paid by, the public sector. Government's approach to adjustments has also been sufficiently erratic that changes have normally taken place as a result of pressure.

There should be a reasonable, permanent relationship between the legal aid tariff, Crown Counsel wage scales, legal services staff lawyer wage scales, contract counsel rates, and so on.

With respect to private sector comparison, the profession has called for implementation of the 1984 Hughes recommendation, commonly referred to as "the 75% rule," which would result in "a fee schedule approximately 25% below fees that an average lawyer would charge a paying client with modest means." According to the Association of Legal-aid Lawyers, the present criminal tariff requires a further 25% increase to reach this level.

The "75% rule" reflects, among other things, the fact that bills are virtually guaranteed. However, it is impossible to determine what the formula means in a private sector context: the use of terms such as "average lawyer" and "modest means" can only result in endless, fruitless debate.

During a process marked by vocal disaffection and perceived underfunding, it was difficult to find criminal law practitioners (at least those who monitor their practices carefully) for whom the tariff remains problematic. On the contrary, some reported an ability to earn more through the tariff than from paying clients. Increasing numbers of lawyers are willing to accept tariff referrals; indeed, some grumbled about "the big downtown firms" now sending juniors to collect legal aid referrals, while others perceived a "feeding frenzy." British Columbia has also experienced an economic downturn; several times the review was reminded that "it's a hungry bar out there."

As best can be determined, the present tariff is likely ahead of the market at the moment and may well be above the levels recommended by the Hughes report. It is at least competitive.

In future tariff negotiations, care will be required to ensure a tariff that is reasonably competitive and sufficient to maintain an adequate pool of lawyers willing to do the work. The volume of legal aid cases should be considered relative to the total court caseload, since it appears that legal aid represents a majority: the tariff itself may be a significant force in setting market rates.

The family tariff continues to lag behind, though the degree is difficult to measure precisely. It is likely that allowing greater preparation time would be sufficient. Discussions between the society and the family bar can resolve that matter.

There seems to be little justification for change to the immigration tariff; no change is proposed.

The human rights tariff is significantly below an acceptable level. It should be equitable with the rest of the tariffs.

A number of lawyers and others involved in staffed services have suggested that a limited civil tariff should be available for cases which are lengthy or require special expertise. It need not be extensive and should be used at the discretion of the local offices to supplement their work.

Recommendations:

98. The society should rework tariffs to achieve relative equity. This should be accomplished by reducing the criminal tariff and raising the others. At present rates, a criminal tariff reduction of approximately 10% overall would allow for significant improvements to the family and human rights tariffs. It does not appear that the immigration tariff is problematic.
99. The society should establish a limited civil and administrative law tariff to complement staffed services. Referral should be at the discretion of local offices and is intended for cases which are either lengthy or require particular expertise.
100. Government should develop a comprehensive framework for publicly-funded lawyer compensation and the Legal Services Society should be included in that process. If tariffs are ahead of other lawyer compensation, they should be frozen until appropriate relationships are achieved or adjusted upwards on a phased basis as needed.
101. For the long term, there should be a continuing relationship between increases to tariff rates and wage increases in the staff system.

Proposed Structural and Service Delivery Models

OVERVIEW

This section describes a recommended model for the improved delivery of legal aid services in British Columbia.

Thus far, the report has dwelt at length on the service delivery, financial and management difficulties facing the Legal Services Society. For all these shortcomings and problems, there are very real strengths upon which to build.

Virtually every element proposed can be found within, or close to, existing legal aid services in British Columbia. Virtually every element has operated successfully, in most cases for a range of 10 to 20 years. There is little in the model which is new.

What is new is that these elements are brought together in an integrated way for the first time and new working relationships are proposed.

While the model cannot be completed without amendment of the *Legal Services Society Act*, most elements can be fully implemented within the present mandate of the society and can proceed without delay.

The proposal assumes the present level of expenditure on legal aid services. It assumes the reallocation of funds made possible by service delivery efficiencies. It assumes at least the same standards of service and it extends service availability and quality in several important respects. It increases the total caseload capacity of the system. It also forces no additional costs onto other systems as a consequence.

The model does not address every issue, nor is it defined exhaustively. Further consultations and considerable detailed planning, are required respecting particular communities and particular services. However, the model demonstrates that it is possible to organize services and allocate resources in ways which substantially enhance service availability, access and quality within existing rates of expenditure. It suggests an organizational framework within which needed planning and consultation can best occur. And implementation of the first phase can begin almost immediately.

The review indicates that substantial and enthusiastic support for this direction exists among stakeholders within the organizations presently providing service, the legal profession and public constituencies concerned about legal aid services.

No one interest group "gets everything they want." All parts of the system – private bar, branch offices, community offices, society headquarters – are asked to make significant changes to how they participate in the delivery of legal services and to make modest sacrifices. At the same time, all significant interest groups remain integral to the delivery of legal aid services.

After many years of working in isolated, parallel ways, the various service providers must now begin to work together. This proposal calls for new partnerships among these interests in order to improve services to assist the poor and disadvantaged.

Change will not come easily. Nor will learning to collaborate with one another. However, these changes must come and they must come soon.

REVIEW OF ISSUES

Before turning to the proposed model, it is important to review several issues which have been in the forefront of recent debate regarding the delivery of legal services. They are:

> a comment on the conflict between legal aid services as charity or as a right;
>
> the "public defender" option, especially the ministry staff report of November 1991;
>
> the report of the 1984 task force on public legal services;
>
> the Legal Services Society policy on service delivery models; and
>
> other policy concerns, including independence of the bar and choice of counsel.

These are followed by a description of a proposed model for community-based management of public legal services and for comprehensive local service delivery. An example of an implementation process and costing over three years concludes the section.

Legal Services: Charity or Right?

The enduring attitude that legal aid services are charity complicates the issues under review.

Legal aid service's roots are charitable: lawyers initially volunteered their services and it was many years before remuneration was paid. It was much longer before remuneration even came close to private fees. Lawyer participation was promoted as a professional obligation to the community.

Over the years, legal aid increasingly came to be regarded as a right; this view fuelled pressure for increased funding and fees. At the same time, within the community, the profession and government, the view persisted that legal services should be in part charitable.

These values are contradictory. They contribute to: inconsistent public policy respecting the funding of legal aid services; conflicting attitudes, even within the profession, towards those needing legal services; perceptions of legal aid as second class service, even when provided by private practitioners; and, in no small measure, to the policy conflicts surrounding the Legal Services Society.

The charity approach to legal aid services is inappropriate in this day and age. Legal aid services are a necessary public service. Those in need are entitled to competent, effective services. Those providing services should be paid properly for them.

Government must accept the value of the service and should not expect service providers to subsidize costs.

The bar's continuing obligation to voluntary service should focus on matters not covered by the legal aid tariffs.

Accountability for the efficiency and quality of services should increase. The society is responsible for the planning, supervision and control of the services which it pays for.

Finally, the bar's traditional sense of "ownership" of legal aid must give way to a shared partnership with wider interests. This will not weaken legal aid services; on the contrary, it is essential to strengthening them.

Public Defender Option

Debate has focused substantially on the merits of the judicare and public defender models of providing service. A Ministry of Attorney General report on the subject drew intense criticism. Legal Aid Models: A Comparison of Judicare and Staff Systems, November 1991, was prepared by Ministry of Attorney General, Policy and Program Services Division.

The report was prepared on the instructions of Treasury Board following the May 1991 tariff settlement, and in consultation with the Legal Services Society, which provided the basic cost and caseload data. The society was also provided with a draft of the second part for review and comment. Two of the three government staff involved in preparing the report were lawyers, one of whom had legal aid experience.

Summary of Contents

Part one of the ministry report is a costing study, presenting several models for providing legal aid in Vancouver through a combination of staff clinics and the private bar. Costs were compared with current tariff costs. Part two reviews the results of evaluation studies of legal aid plans elsewhere in Canada and the United States. Judicare and staff-based models are compared respecting case outcome, client satisfaction, choice of counsel and the independence of legal aid lawyers.

Summary of Conclusions

- The annual cost (1990/91 data and costs) of a staff model large enough to handle 95% of *Young Offenders Act*, summary conviction, family and immigration cases in the Vancouver area is projected at $6.3 million, compared with a projected cost of $11.4 million in equivalent tariff service. The cost differential would be larger if staff coverage included indictable offences and/or if staff models were established in other areas of the province. A review of other jurisdictions indicates that staff models cost between one third and one half as much as judicare models due to higher productivity, lower administrative costs and fewer trials.
- Time per case is lower with staff models, likely due to greater specialization, more negotiated settlements, fewer trials and less travel time.
- Staff lawyers more often enter guilty pleas; judicare lawyers more often go to trial. Both models produce similar rates of guilty verdicts. Sentencing patterns show judicare clients more often go to jail while staff lawyer clients more often receive fines, probation or other non-custodial dispositions.
- In most evaluations, the service quality of staff lawyers was found to be equal or superior to judicare lawyers.
- Three studies which addressed choice of counsel reached quite different conclusions: Brantingham (British Columbia) found that the level of client satisfaction did not appear to vary between judicare and staff lawyers. A Saskatchewan study found that while one third of legal aid clients thought their case would have had a better outcome if they had chosen their lawyers, this opinion is contrary to the observed verdict and sentencing outcomes. A Canadian Bar Association study suggested that offering a choice of counsel may actually deter some people from seeking legal assistance.
- Brantingham reported concern, including that of staff counsel themselves, of a perceived or possible threat to the independence of counsel. Case outcomes and service quality measures did not provide any objective basis for this concern. The Canadian Bar Association paper concluded that the solicitor-client relationship is threatened by the use of any legal aid plan because of the separation of payment and instructions, and suggested that this was potentially more of an issue with a staff model because the choices of both clients and staff are more limited.
- Brantingham found that 10 small and one large staff offices could be established throughout the province without substantial impact on the private bar. The Canadian Bar Association paper suggested the private

bar is desensitized to poverty issues by use of staff systems and that the staff model tends to become institutionalized.

Critiques of the Report

Reaction to the report was swift and largely negative. The bar, especially the Association of Legal-aid Lawyers, challenged the quality of the research as well as its conclusions. Private bar critics stressed: lawyer independence; choice of counsel; the likelihood of staff systems becoming overworked and underpaid; the likely dependence on junior, inexperienced counsel; the view that staff systems should be used only if and where the private bar is unable or unwilling to provide the service; and the negative economic impact of a public defender system on the bar.

Some community agencies echoed concerns regarding independence and choice of counsel. They feared the government's motivation was to save money at the expense of the poor and called for extensive consultation before any changes were made.

Others noted that the study neglected the administrative and civil areas of poverty law, fuelling suspicion that this work continued to be regarded as an unnecessary frill.

While many feared overworked, underpaid public defenders, no one expressed the opposite fear that underworked bureaucrats might back up the entire court system.

One lawyer who does a high volume of legal aid work speculated that while the public defender model would lack necessary competitive incentives, it would allow counsel to be more purely officers of the court and less challenged by the ethical dilemmas of competitive practice.

Finally, there was also supportive comment. Many of those who administer the tariff noted that the bar's criticisms also apply to some tariff services; others suggested that well designed and well managed staff service can avoid the feared negative impacts. Virtually all saw the need for continued private bar involvement.

Discussion

The ministry report claimed two important accomplishments: it forced a healthy debate and review of the service; and it placed productivity, cost effectiveness and accountability on the management agenda. Both are long overdue.

This review examined caseload data community by community and confirms that Vancouver-based projections cannot be extended on a provincewide basis, therefore the 95% staffed option outlined in the ministry report is not viable. This is simply due to the distribution of criminal and family cases among a large number of communities: volumes are often small enough to preclude the efficient use of staff.

Other difficulties include:

- it does not go far enough in considering the use of paralegals to enhance service capacity and quality;
- it does not adequately consider family law needs;
- it does not address civil and administrative law needs;
- it does not address continued family tariff inadequacy; and
- it is too optimistic about the present salary scales for staff lawyers and other positions.

A more conservative approach to projected staff caseloads and costs was also felt in order. Nevertheless, the report's finding that staff delivery is now less expensive than tariff services is accurate. A fully staffed system would have significant economic impact on the private bar, particularly in this recessionary period, and on those who rely on legal aid referrals for a significant portion of their income.

Increased use of staff lawyers and other staff in the delivery of legal services is desirable and should be implemented. However, an active role for the private bar also exists and must be nurtured. Further, a flexible approach to service delivery is most cost-effective. The organizational dangers of a cumbersome, centralized service would, in the long run, undermine both quality and cost objectives. Therefore, a provincewide public defender delivery model is not recommended for British Columbia.

Report of the Task Force on Public Legal Services
August 1984, (Hughes Report)

The Task Force on Public Legal Services was established by the Attorney General to enquire into: "the nature, range and priority of legal services . . . which ought to be considered essential and provided at public expense;" the eligibility requirements for legal aid; and the financing of public legal services. It was chaired by the Deputy Attorney General. The task force reviewed the following subjects:

- criminal law coverage;
- family law coverage;
- civil and administrative law coverage;
- native matters;
- education, advice and information about the law;
- prison legal services;

- eligibility for publicly funded legal services;
- methods of providing lawyer and paralegal services to clients;
- the tariff;
- costing implications;
- funding alternatives; and
- priorities.

Extensive recommendations were made in each area, and were prioritized as follows:

- additional family law coverage;
- enhancement of services to native peoples;
- adoption of flexible eligibility criteria;
- implementation of administrative law coverage; and
- implementation of additional coverage in other matters.

With respect to service delivery options, the task force made two recommendations (Chapter 7):

> There is no single mode of delivery of legal services that is inherently more effective and efficient in all cases at all times. It is therefore recommended that the board of the Legal Services Society be vested with the flexibility and discretion to determine how to best provide lawyer services to legal aid clients as suggested by particular circumstances.
>
> The task force recognizes the valuable role of duty counsel, paralegals and courtworkers as an effective and efficient means of providing and augmenting the delivery of essential legal services. It is recommended that the board of the Legal Services Society preserve these services as an integral component in the delivery of legal aid services.

The report returned to this issue in Chapter 7, again observing no inherent cost or quality advantage among:

(a) private practitioners acting on an ad hoc case-by-case basis for a fee under a tariff,

(b) private practitioners acting under a full or part-time continuing-contract-for-service, and

(c) staff lawyers employed on salary

and advocating that "the Legal Services Society, as part of its management responsibility, remain free to select from these three modes in order to maximize service and minimize cost as the situations in various community and service areas throughout the province indicated. For the foreseeable future, the likely consequence of this policy will be a continued general reliance on mode (a) above, augmented by modes (b) and (c) in selected circumstances. It follows that a sound tariff of fees is a key element in the maintenance of a viable legal aid program throughout the province."

The report called for "… a tariff adequate to ensure a reasonable level of representation" based on the "recovery of lawyers' overhead plus one half of the balance of fees that a lawyer would normally charge a paying client of modest means." This would result in a tariff approximately 25% below fees that an average lawyer would charge a paying client with modest means, generally referred to in the profession as "the 75% rule;" it was also anticipated that the bar would augment the legal aid program through continued provision of pro bono services.

The report also called for considerable additional funding in order to raise the tariff to an adequate level and recommended a phased-in increase.

Discussion

Eight years later, the general thrust of these recommendations remains pertinent.

If anything, the value of paralegal and courtworker services has increased and has been enhanced by lay advocates employed by community organizations. There is good evidence that service quality will benefit from further integration of these roles into mainstream service delivery.

The recommended flexibility and discretion vested in the board of the Legal Services Society were poorly exercised. There was little or no experimentation. There were no attempts to consider more effective ways to mix forms of service to enhance quality or access. Inadequate attention was paid to either service or cost. On the other hand, reliance on the tariff became an article of faith.

While the need for a "sound tariff" continues to be pertinent, "the 75% rule" is an especially difficult guide. Tariff rates are reviewed in some detail in the financial section of this report.

Finally, neither the service nor the funding levels proposed by the task force were ever accepted by government. Four years later, the report of the Justice Reform Commission, again chaired by the Deputy Attorney General, recommended that the government implement the 1984 report.

Legal Services Society Policy on Service Delivery Models
September 21-22, 1991

The Legal Services Society Board reaffirms its commitment to a mix of delivery models aimed at giving clients the best and broadest services possible within available resources.

In choosing the model or models to apply to any particular service need, the Legal Services Society will take the following criteria into account:

- What is the cost to the Legal Services Society of the service to the client;
- What is the cost of implementing the service;
- What is the cost of administering the service;
- Does the model ensure that the service is available to the clients who need it;
- Is the program perceived to be accessible to the clients;
- How does the particular delivery model limit or enhance the effectiveness of the service having in mind the objects of the society and the particular program;
- How good is the service and how consistent is its quality;
- Does the delivery model make it apparent that the service is independent of the government and is it actually independent from government interference;
- Is the client provided with a choice of representation most suitable to his/her needs or tastes; and
- How does the service model respond to changes in the number of clients which must be served.

Tariff services are an appropriate delivery system in areas of law in which the private bar has experience and expertise.

In those areas, staff-delivered services should be subject to the client's individual right to choice of counsel, where reasonably available and consistent with this policy.

Discussion

This policy purports to adopt the flexibility advocated by the Hughes report; yet it clearly suggests a preference for tariff services.

At the same time, had the society applied the policy against existing family services, it would almost certainly have declared tariff services a failure in most parts of the province.

TARIFF DELIVERY – STAFF DELIVERY

After extensive consultation with the various stakeholders, the conclusion is that the debate between the use of staff or private bar in delivering effective legal aid services is the wrong debate.

It is useful to start with a review of how tariff and staff counsel view one another and how the community views both.

Mutual Perceptions

The review consultations found both praise and criticism of the services of private practitioners. Many were praised for their dedication, diligence and willingness to "go the extra mile" for their clients, often regardless of income considerations. On the other hand, there were frequent criticisms of criminal lawyers for inadequate preparation, first seeing clients five minutes before court, unnecessary adjournments and manipulating duty counsel services for personal gain. There was frequent distress at the inadequacy and even incompetence of lawyers doing family cases, particularly difficult matters respecting custody or child apprehensions. While negative comment came from a variety of sources, the harshest critics were often their professional colleagues.

Staff lawyers also received both praise and criticism. Client and community group interests generally supported staff counsel, attributing to them sensitivity to client needs and desire to assist without delay; negative comment was that they were overworked and their offices understaffed. On the other hand, while their private colleagues often complimented individual staff counsel, they were harshly critical of them collectively. They regard staff counsel as underworked and less than competent; those who cannot compete in the high pressure private environment become staff lawyers: "if they could handle the pressure, they'd be out here with us." Staffed offices of the Legal Services Society were referred to at least once as early retirement havens.

The extent of negative comment respecting service delivery and quality suggests an unfortunate amount of truth in both directions. The message, then, is to both the private bar and to the Legal Services Society: there are enough examples of inadequate work that higher expectations and better performance monitoring are in order.

Personal Preference

Many lawyers active in legal aid work, especially in the criminal bar, leave the impression that their concern for an independent bar very much includes concern for their personal independence. Their opposition to staffed services stems from a fear of losing personal autonomy, independence and the right "to be one's own boss." Many would not wish to work in a large staffed structure, regardless of reasons of income or workload.

In itself, this consideration should not speak against expansion of the use of staff counsel, but it must be respected. The legal services system can ill afford the loss of access to experienced, talented counsel. They, on the other hand, need to acknowledge that neither salaries nor large organizations do not result in automatic incompetence, overwork, lack of competitiveness or poverty.

Lawyer Independence

The independence of counsel in representing their clients must be respected. No government or legal aid administration should intrude on the ethical obligations of lawyers to their clients.

However, lawyers practise in a variety of environments – private, contract, ad hoc contract and a variety of staff situations. It surely is not suggested that some of these lawyers are inherently independent while others, by definition, are not.

A fully staffed legal aid service raises a theoretical concern about erosion of independence. However, a vigorous staff component and an equally vigorous tariff component are proposed, under the auspices of a revitalized agency which remains independent of government. Furthermore, they are intended to relate more closely than in the past and each will be under greater peer scrutiny by the other. It is difficult to see how this will erode the independence of the bar; if anything, it may be enhanced.

In addition, the organizational and quality-control mechanisms proposed by this review are designed to enhance the public and professional integrity of the legal aid system. The profession is expected to be fully part of that process and to ensure that essential principles are not undermined.

Choice of Counsel

The right to choose counsel has been a central argument raised against a staffed model. The profession and others consider choice essential to the delivery of legal aid services.

Various arguments are used. Since paying clients have their choice of counsel, denying this right to legal aid clients results in at least the perception of second class service. Persons charged with serious criminal offenses or women endeavouring to deal with difficult, complex custody hearings should be entitled to lawyers whom they trust and in whom they are confident. One lawyer also noted that the right to choose counsel was less significant than the right to fire counsel if dissatisfied.

Considered from a client perspective, choice of counsel is a significant issue.

At the same time, choice of counsel is not now, nor has it ever been, absolute. Many constraints temper choice in legal aid: a lawyer's right to refuse legal aid referrals; limited numbers of lawyers in most communities; lack of access to local lawyers in family cases throughout most of the province; and the society policy preventing staff lawyers from accepting client requests to represent them in favour of tariff referral. The proposed changes will enhance real choice for many clients.

Choice of counsel is also of relative importance to various clients. It is surely a much more critical concern to a person charged with and pleading not guilty to a very serious crime than to a person intending to plead guilty to a minor offence and looking for counsel respecting sentence. It is more important to the parent whose children have been apprehended than to the person seeking summary information about the implications of a possible separation. A mixed, flexible service delivery model can maintain choice of counsel where it is needed, as well as extend service availability.

The right of a client to choose a particular lawyer should not necessarily extend to the right to choose a law firm on the strength of a "name" if a junior will be inevitably assigned.

Nor should it justify the use and manipulation of duty counsel service to generate business. The exercise of free choice of counsel in police cells would be more credible if duty counsel were disinterested parties.

Finally, the best wisdom of the profession respecting the judgement calls that are necessary will continue to be available through the Law Society's appointing authority to the board of the society.

Discussion

The 1984 Hughes report is correct: neither model is inherently superior to the other. Both private and staff counsel can be highly effective and both working environments have unique capacities. A superior legal services system requires both. The way forward is to define not just an appropriate mix but the best possible working relationship between the two.

A poorly managed, overly bureaucratic, centralized, uncreative and unresponsive management will produce poor staffed services. However, government, the profession and the community all seem to agree that the system must be well managed. There is no reason to expect less.

It is important that the Legal Services Society itself operate independently from government. The concerns are the same whether in criminal matters, family cases or administrative tribunals; the government itself most often acts on the other side of legal aid cases. Therefore, the interests of clients are best served by an independent agency.

Society policy must prevent administrative or board interference in the conduct of particular cases.

The following general approach to choice of counsel is proposed:

- Duty counsel services should be organized and supervised so as to eliminate their use as a method of soliciting business.

- The society should have the right to require staff provision of intake, summary information, issue identification and clarification, referral to alternate or complementary services, confirmation of need for lawyer service, eligibility for lawyer service and other similar functions prior to lawyer referral. Any right of choice commences at the point that the need and eligibility for lawyer involvement is determined, which is a management decision of the society.
- Choice of local staff and private lawyers should be available in serious or complex criminal trials, family matters and tribunals requiring counsel; it should be restricted where out-of-town counsel is required, except to deal with conflicts; choice should also be balanced against expertise; choice should be restricted or at Legal Services Society discretion in first appearance, bail, guilty pleas, trials for less serious offenses, other minor hearings (first report to court in apprehensions should not be considered minor) and so on.

Community-Based Management

A recurring theme throughout this review is the need for additional community interests to join in the planning and management of legal services.

An earlier section addressed this need at the board of the Legal Services Society. Comparable change is proposed at the local level.

Community boards are not new to the legal services system. They have been a feature of community law offices and native community law offices for nearly 20 years.

There have been a few failures; most have weathered their various storms and demonstrate admirable durability and vitality.

Concerns

Throughout the consultations, various views and concerns about the extension of community boards were expressed.

Society Headquarters

Society managers were concerned about the value of community boards overseeing criminal legal aid. They did not see a useful role in tariff referral and administration; or in managing a "criminal legal aid clinic" as they envisaged it. They questioned that the community law offices would want this responsibility, given their generally greater interest in family and civil law. They felt there is little room for community input vis a vis service delivery.

Management was also concerned about the extent to which local boards would wish to deal with administrative, as opposed to policy and planning issues.

Branch office staff

Some staff lawyers also raised concerns:

> The former Williams Lake board was a failure. Unlike Quesnel, the community was always split and its temperament has not changed. There was also intrusion by the board into case work.
>
> A staff lawyer worried that community people can be overloaded; while creation of a community board would likely be difficult, she would be amenable if the community demanded it.
>
> The failure of the Kamloops board some years ago was noted; concern was raised about how to select boards and how to protect against takeovers by self-interest groups.
>
> The Prisoners' Legal Services staff in Abbotsford proposed a board to supervise provincewide services to prisoners.

Private bar

Very few comments were made by private lawyers about the value or difficulties of community boards, except for those practitioners now involved with them as consulting counsel or board members, who were very positive.

The profession can be expected to have some concern: that community boards might interfere in referral or client service; that inappropriate service priorities might be established, to the detriment of client need; that boards may not adequately understand or accept the legal and justice principles underpinning legal aid; and that a role for boards might be very limited, and therefore not worthwhile.

Community agencies and organizations

Community agencies and organizations, including the community law offices, were consistently enthusiastic, seeing this development as logical and workable. They referred to particular advantages not otherwise available: greater diversity of expertise in policy development; wider community connections that could help the service; greater responsiveness to local client needs; and a wider and more active base of public support for the provision of legal aid services.

Some community law offices and other groups advocated a "community control" model in which the local organization would maintain virtually total control of service delivery issues on a "globally funded" basis. Society headquarters would have a minimal role.

Finally, a comment from the director of the Victoria Law Centre:

> The board gives you someone to support you; it overcomes isolation. Legal Services Society has more respect for us because of our board. Community involvement affects the office's development in the long

run; it also creates the expectation of involvement in the community, and so most of the staff now sit on other community boards.

Unions

Three unions are associated with public legal services in the province: the Professional Employees Association represents the staff lawyers of the Legal Services Society; the B.C. Government Employees' Union represents other society workers; and the Canadian Union of Public Employees represents the staff of two community law offices. Attempts to unionize by employees of other community offices have not proceeded because of very small bargaining unit size.

The Professional Employees Association wants to avoid a fragmented system with many small, scattered employers; they want to see a common employer.

The BCGEU takes a similar position. Union representatives expressed concern about numerous small employers and about poor personnel practices by lay boards.

There was no contact with CUPE during these consultations. This union represents employees of two of the "small, scattered" employers.

Society staff employed in branch offices are not locally supervised by anyone with authority; grievances immediately find their way to headquarters senior management. One union indicated pleasure that this resulted in consistency. (It is also indicative of a system which is poorly managed.)

Unionized and non-union community law office employees expressed a preference for the community board structure. At the same time, they sharply criticized funding and policy practices of the Legal Services Society which leave them feeling they have second class status: allowing community office access to pension plan participation a full year after it was available to society staff; refusing to make the society's employee assistance program, or equivalent funding, available to community offices; and other similar concerns. There are real obstacles to career paths in the system, including non-transferability of seniority.

Discussion

There is no evidence that community law office boards dislike dealing with criminal matters; they only worry that the priority of other work not be undermined by the policies of the society or pressure from the profession.

The lack of community input into criminal legal aid does not indicate a lack of interest and even less of need. There are significant community perspectives which could produce, in partnership with the bar, cost-effective and long overdue service innovations. They've not been involved because they've not been asked.

There have been two community law office failures since they were first established under the Legal Services Commission almost 20 years ago. All the rest survive. This is a rather good record, since boards received minimal attention from the society.

The potential for a community board failure exists. The society must have the capacity to install a trusteeship, or even direct management for a period, in such a case.

Concern about board takeovers by special interests is also real, though less often than is feared. Some offices allow for the designation of some directors by significant stakeholders, such as the three positions which the University of Victoria law faculty hold on the board of the Victoria Law Centre and the one labour council appointee at New Westminster.

Various bylaw mechanisms, such as annually electing one-third of the board, can ensure a degree of board stability and continuity.

Is there danger of overloading community people? Yes. However, this danger is usually matched by resistance to seek out and involve new people. Community boards do not just happen and they do not remain healthy without nurturing. The society needs to devote suitable skills to board development.

Community boards do not have carte blanche authority; they manage services delegated to them by the society. The society can ensure that all required services and standards, including those respecting employment practices, are maintained. A strong central role is sufficient to balance idiosyncratic expressions of democracy and is essential for maintaining provincewide standards.

Community boards are subject to society policy excluding them from interfering in intake, referrals, and the conduct of cases; and prohibiting access to client records.

Community boards can bring together diverse interests, including views which challenge accepted wisdom. Better that such debates occur among those who share the same decision-making table, than by those who never get to talk directly to one another or work together.

The primary value of community boards is service planning and oversight. However, an advisory role will not work: it cannot have sufficient power to counter the daily staff pressures between the local office and society headquarters. In order to be effective, boards must have real authority over their service areas and offices. This requires that local staff be directly accountable to local boards.

If the society is concerned about who does the bookkeeping, such responsibilities could perhaps be delegated to an efficient headquarters. However, it must be clear that "policy" includes such matters as personnel mix, local office budget allocations and local spending control. Community boards require real authority, including appropriate authority over administrative mechanisms.

There is no reason to assume that the concerns of unions and the use of community boards are mutually exclusive. Nor should community boards fragment the structure.

The society already controls wage scales and basic benefit packages for community and native community offices. It has been the society's habit to fund wage increases equivalent to whatever it has settled with its own unions. The society has not treated the offices equally in certain benefit and other matters.

The society should deal with: wage and benefit grids; harmonized benefit plans; consistent standards of service; common position descriptions; common standards of supervision and control; common standards respecting qualifications and training; and employee mobility within the system.

Local boards should address local service priorities, the particular mix of staff and tariff resources to be utilized, the direct management and supervision of staff, and local working conditions.

The principle of master and component agreements would address the practical employer/employee issues.

Who is "The Community?" What Interests are Represented?

Service planning starts with a careful review of who the clients are. Those interests should be included in the planning. There are many self-help groups, lay advocates, service agencies and a variety of professionals who refer clients into legal services, who are generally familiar with the justice system and who can provide invaluable knowledge and assistance. A few examples:

- civil/administrative poverty law: anti-poverty groups; advocates for persons with disabilities; aboriginal groups and agencies; women' centres; HIV/AIDS advocates; labour unions; immigrant and multicultural service agencies; seniors' organizations; and social workers.
- family law: transition houses; women's centres; multi-cultural service agencies; public health nurses; counsellors; and anti-poverty groups.
- criminal law: street youth agencies; advocates for mentally ill persons; native organizations; a variety of justice service agencies; anti-poverty groups; organizations of people with disabilities; justice system staff; and retired police officers.
- information and education services: all of the above, plus educators in school and post-secondary systems.

There is also a place in this structure for lawyers who wish to participate in the policy and management work of the legal services system.

Virtually all the above interests have been, or are presently, active in community law boards throughout the province.

The Non-Profit Sector Perspective

The proposal connects the delivery of legal services directly to the perspectives and expertise of the non-profit sector. This sector has developed sound and lasting expertise in developing services which are flexible and responsive to the community, which build public support, which draw on a variety of disciplines and which are prudently managed. It balances well the perspectives of the legal profession and the central management concerns of the large-scale enterprise that the Legal Services Society has become. It adds strength presently lacking.

Structural Options

The basic structural model is a non-profit society, community-based with an open membership, locally accountable through a broadly based board, contractually accountable to the Legal Services Society, and responsible for comprehensive service delivery within a given geographical area. Variations on the model are possible and to be encouraged, including native community law offices and provision for specialized services where appropriate.

Specific structural variation is inevitable. There are already a number of variations:

- Victoria board: three persons elected by membership; three persons appointed by local bar; three persons appointed by University of Victoria law faculty; staff are employees of Legal Services Society, except for two on University of Victoria faculty.
- Nanaimo: Community law office, with board and own employees, shares office and operates as largely integrated unit with Legal Services Society Branch.
- New Westminster: community law office incorporated expressly for that purpose.
- Langley: community law office structure with official status of area director; incorporated for express purpose; no Legal Services Society funds.
- Maple Ridge and Abbotsford: community law offices as programs of larger community services agencies.

- Powell River, Quesnel and Penticton: community law offices as stand-alone programs of local Human Rights and Civil Liberties Associations.
- Cranbrook: community law office with broad-based board appointed by tribal council.
- And noting, with respect to Native Programs Branch funded agencies, the inclusion of friendship centres, as well as local societies with somewhat differing relationships to bands and tribal councils.

Recommendations:

102. The organization and management of local and regional services should be integrated under the direction of community-based boards.
103. All existing community and native community law offices should be retained. Branch offices should convert to community-based status within 18 months and the society should assign staff resources to assist this process.
104. Each office should be allocated a distinct geographical service area, and be assigned authority and budget for all legal aid services within that area, including tariff services and any area directors serving smaller communities.
105. Community-based offices should be required to be reporting non-profit societies established for the purpose of providing legal services, with membership open to any individual resident within the defined service area and to any constituted body located within the service area. They should also be registered as charitable organizations.
106. Boards would be elected annually, with no more than 40% of their directors appointed, and provided that specific bylaw provision defines the appointing authorities. Provision should be made for reserve-based and urban first nations offices, specialist offices, and specialized services contracted to other agencies and organizations.
107. Each board would assume authority for the planning and management of all legal aid services within its mandate and for acting as the local agent of the Legal Services Society. An operating agreement should define the relationship and set out the authority and duties of the office. Annual service plans and budgets would be developed by the local board and be subject to the approval of the society.

Regional/Local Structure

While there is a lengthy history of local offices serving individual communities, there is merit to a more regional approach. The society should encourage adjacent local offices to consider uniting under regional, rather than local boards. This could be especially beneficial to large geographic areas to ensure reasonable representation and allocation of resources.

In most cases, a geographic unit should not be less than 100,000 population. One board could readily supervise more than one office in a region.

Recommendation:

108. The society, in consultation with local offices, should design a regional model for community boards, giving appropriate consideration to population, geographic and other considerations.

Regional/Local Services

The model proposed is highly decentralized. It does not, however, give over all authority to community boards. If an effective service system, together with provincewide standards of service, is to be developed, it will be necessary to strike a balance between local and society authority.

Under authority delegated and supervised by the Legal Services Society, local/regional boards would provide policy direction, establish local priorities, ensure ongoing involvement of community interests, ensure ongoing service responsiveness to community needs, and represent the local community and service in policy development with the Legal Services Society.

The office would supervise satellite offices and area director services within the service area, as required.

It would maintain: a suitable staff mix of lawyers, paralegals, secretary/legal assistants; a senior manager where needed; and multi-disciplinary staff as required.

It would refer cases to the private bar on the tariff. This service may also be provided by contract or other mechanisms as deemed appropriate by the society.

It would work with lay advocates and professionals in other agencies and organizations, and provide legal supervision, access to training and support for those fulfilling quasi-legal and information roles.

Services funded by other authorities could be undertaken so long as they did not conflict with the delivery of public legal services.

Provincial Authority

An effective decentralized service system requires effective central authority. In some important respects, the society headquarters would play a stronger role than it does at present.

The Legal Services Society would control provincial policy, including service and eligibility requirements. It would establish and maintain standards of service, including standards respecting employee qualifications and tariff services. It would: approve local office service plans and budgets, and ensure completion of local service evaluation requirements; provide provincial planning, research and data analysis; conduct service delivery evaluations, audits and investigations; and maintain necessary central administrative functions. It would provide offices with operations support, information and education assistance, and training services. It would control training and continuing education resources.

In general, its style would be co-operative and consultative. However, it will require the ability to enforce standards and demand accountability.

Governing Relationships

Relationships between the society and community-based offices would be governed by an extensive operating agreement spelling out the services to be provided and the standards to be maintained; financial planning and management requirements would be specified, along with service monitoring and service evaluation processes.

It is intended that non-specialist offices would provide all core legal services in the most effective and efficient manner appropriate to local circumstances and would have additional discretionary authority over ancillary services.

Transition

Implementation of a community-based structure requires that the Legal Services Society maintain a staff capability to develop and assist local boards. Other costs would include travel and child care subsidy, but would otherwise be minimal.

No legislative change is required to commence the process.

Detailed consultation would be required with individual offices and through the Association of Community Law Offices.

Further consultation and planning with the native programs offices would be necessary to determine the future direction of those services. This structural model can accommodate a variety of outcomes to that process.

SERVICE DELIVERY

Defining Legal Services

The definition of "a legal service" must be re-examined. A new understanding of core services must be derived from client need, not from arbitrary definitions or traditional views.

The traditional division of legal aid services into criminal, family, and civil/ administrative may be inadequate. These categorizations reflect the evolution of legal aid services within the legal profession and the source of pressure for those services; they do not necessarily reflect the way client groups perceive their needs today.

It is also inadequate to limit services to "pure law provided by lawyers to individuals facing specific charges or court/tribunal actions." Lawyers themselves recognize the very great extent to which they are called upon to be counsellors, crisis workers, educators and so on. Similarly, services must be increasingly multi-disciplinary in perspective; and services must increasingly bring together professional, paraprofessional, lay advocate and public elements.

Graduated Levels of Service

Most service is presently organized on the assumption that once eligibility screening is completed, a client is immediately referred to the "high end" of the service system, i.e. to a private lawyer. There are many examples, from client, community, administrative and practitioner sources, suggesting that this is neither efficient nor effective. Health and social service systems speak about services in terms such as "primary, secondary and tertiary care" (with both service and geographical connotations) or "prevention, early intervention, remediation." It would assist the planning and management of public legal services to adopt a similar framework.

An effective service system will contain a healthy mix of staff, including: lawyers, paralegals, support staff and occasionally other disciplines such as social workers, mental health workers and so on; utilization and support of lay advocates attached to community and self-help organizations; and the services of the private bar. These service elements must work closely together, in greater co-operation than we have seen in the past.

Comprehensive Service Delivery

Offices should offer "one-stop" service:

- information and education to the public and to targeted groups;
- intake and eligibility determination for lawyer service;

- duty counsel services wherever required;
- summary advice procedural assistance and private bar referral, without financial eligibility;
- informal advocacy, advocacy and formal representation, including tariff referral and mediation service or referral, to those eligible;
- legal support for organizations whose members are largely persons financially eligible to receive individual service; and
- participation in activity intended to promote the reform of law, regulation, administrative practices of government or otherwise contributing to community, social and justice development.

Flexible Resources - Flexible Delivery

Staff would provide intake, information, summary advice.

Most civil and administrative cases would be done in-house, with a new tariff referral capacity for exceptional cases.

Paralegal staff would provide family intake, summary advice, information and advice regarding expectations of justice system and of lawyers, helping to focus issues for lawyer, and some ongoing emotional and information support. They would also handle procedural assistance and advocacy, including representation, where appropriate. Lawyer handled cases would be shared between staff and the local bar on the tariff.

Staff counsel would share in duty counsel and criminal caseload along with the private bar. The development of stronger courtworker and paralegal roles is also recommended.

Local offices would provide legal supervision and support to other quasi-legal community-based services and lay advocates and would work with local services and organizations whose clients or constituencies utilize legal aid services.

Offices would contribute to community and justice development initiatives through legal support to local community groups, particularly those whose memberships would be largely eligible to receive individual legal services.

They should also initiate programs of public legal education, using their own resources and enlisting the active support of the local bar.

Provision exists in the model for specialist offices, which would also utilize mixes of tariff and staffed services. They should be considered for human rights, family (in some locales), prisoners, children and youth and mental health, immigration, among others. They should not be isolated from the whole system, but should be centres of expertise which other parts of the system can call on for advice and information. The society headquarters can also play an increased information and research role for the whole system.

IMPLEMENTATION

The Legal Services Society can immediately increase the local office staff system to give each office a working presence in all areas of service, open additional offices where volumes warrant, enhance civil and family work, and convert to community-based management. It can do so at no additional cost by diverting funds and cases from tariff to staff services in sufficient volume to pay for the staff. For the first two years, more than three quarters of the work would continue to be referred to the private bar. This can be completed by March 31, 1993.

The following model demonstrates how implementation might occur.

Model Assumptions and Formulae

The model assigns positions to particular locations by rigidly applying family and criminal caseload data. It also accepts existing staff complements as given. It deals with client services only; it does not include other society programs or headquarters operations.

1991/92 caseload data	Criminal	Family
Referrals to tariff bar	42,640	17,723
Referrals to staff	1,240	2,172

Tariff costs per case: criminal $983, adjusted to $885 to reflect the proposed tariff rate changes; family $1,460, adjusted to $1,694.

A criminal law staff team is one lawyer and one support staff. A family team is one lawyer, one paralegal and one support staff. Modest levels of lawyer productivity are assumed.

Staff lawyers are given an equal share of all types of family and criminal referrals and of duty counsel. They are not restricted to guilty pleas, duty counsel or only minor matters.

An average of 172 criminal tariff cases are needed to pay for a staff team. A staff lawyer could handle an estimated 223 new cases per year. This would achieve an efficiency level of 51 cases at $885 per team per year, with a financial value of $45,135 per year. A staff team with a criminal caseload would cost $682 per case, 23% less than the tariff.

An average of 129 family tariff cases are needed to pay for a staff team. A staff lawyer could handle an estimated 142 new cases per year. This would achieve an efficiency level of 13 cases at $1,694 per team per year, with a financial value of $22,022 per year. A family law team would cost $1,537 per case, 10% less than the tariff.

These efficiencies provide further staff capacity to account for the start-up phase, some case volume increases, administration time and additional service, especially in the civil and administrative areas.

Paralegals are included in family teams but their workload is not reflected in these figures. Therefore, family team productivity can be expected to be significantly higher.

It is essential that workloads be recorded thoroughly and monitored carefully.

Detailed calculations for this model are presented in Appendix 3.

A three year proposed time frame is considered optimal, given the management challenges facing the society, the need to collect additional workload data and the developmental processes required. It is likely not possible to effect this much change in less time without a significant risk of failure.

This model is not necessarily the only way to proceed. For example, some lawyer positions should be converted to paralegal positions for civil and administrative coverage.

The society has a great deal of flexibility, within its present mandate and level of expenditure, to alter the mix of services, geographical coverage, and delivery systems. Where it can improve on this model, it should do so.

Objectives: Years One and Two

- integrate the staffed system under community-based management;
- increase services, especially in family and civil law, at no extra cost;
- establish projects to measure lawyer and paralegal workloads, explore maximum potential for paralegals and initiate a mediation component in family service;
- operate within existing tariff rates;
- slow down expenditure growth caused by volume increases;
- allocate priorities and resources more equitably;
- complete consultations respecting native legal services and implement recommendations (*Note:* additional staff are recommended for two existing locations and provision is made for two additional urban offices); and
- complete related changes to headquarters role and establishment.

Year Three

- move to approximately 50/50 tariff/staff service delivery provincewide, and not below 40% tariff services in any one location (*Note:* Vancouver would require reduction to the 41% level in criminal tariff referrals to achieve the 50% overall figure).

Local Office Responsibilities

Each office would participate in the following services:

- intake, summary service, lawyer referral preparation, tariff referral and monitoring;
- criminal legal aid: participation in a share of duty counsel and court caseload;
- family legal aid: participation in a share of all family caseload, including paralegal and lawyer services;
- civil and administrative: depending on the present use of staff, this service will be at least maintained or enhanced; and
- information, education, development work: enhancement can be achieved with the additional staff available.

Application of this model results in the following additions to the staffed system by March 31, 1993:

- In each branch, community and native community law office location where withdrawal of 223 criminal cases and 142 family cases from the tariff would not reduce the referrals to the bar to less than 50% overall, and no more than 40% in any one location: a criminal law team and/or a family law team is added, for a total of 18 criminal law teams and 14 family law teams. Table One shows the locations which would receive additional staff teams. Table Two shows a breakdown of the proposed staff complement for each location.
- Four new community-based offices are established in large communities presently served by area directors: North Vancouver, Duncan, Vernon and Richmond. Each has a criminal team, a family team and a paralegal for civil law work.
- In each of the four locations now covered by area directors, a small combined team – one lawyer and one support staff is proposed. The criteria used are that the number of referrals in either branch of the law is insufficient to warrant a full team, an isolated location is involved, and a combined criminal and family caseload of at least 100 cases remains for tariff referral.

- New community offices are established in Vancouver (native), Surrey (native), Vancouver (neighbourhood), Langley (presently funded by the Law Foundation) and Victoria (suburban), for a total of five criminal law and five family law teams. Each also has a paralegal for civil law assistance.
- Projects are established in Kamloops (family, three teams), Prince George (criminal, five teams) and New Westminster (four criminal and two family teams). They will: experiment with caseloads of 50% of the total; identify the optimum caseload per staff lawyer; identify effect of using paralegals in the criminal and family area; and experiment with mediation.
- Vancouver Gastown has seven additional criminal teams, plus one lawyer, one paralegal and one support staff for an immigration project.

Increased Efficiency and Savings

The model demonstrates that increased efficiency will result from increased use of staff resources and create financial savings over a period of time. These savings should remain in the legal services system to continue the process of service quality enhancement.

TABLE 1
Existing Offices Recommended to Receive Additional Staff Teams

Criminal Law Teams

Branch Offices

Burnaby
Campbell River
Chilliwack
Kamloops
Kelowna
Nanaimo
Nelson
Prince Rupert
Surrey
Williams Lake

Community Law Offices

Abbotsford
Kootenay
Maple Ridge
Penticton
Quesnel
Victoria

Native Community Law Offices

Smithers
Terrace

Family Law Teams

Branch Offices

Burnaby
Campbell River
Chilliwack
Dawson Creek
Kelowna
Nanaimo
Nelson
Prince George
Surrey

Community Law Offices

Abbotsford
Kootenay
Maple Ridge
Penticton
Victoria

Additional Staff

New community offices are recommended at:

Langley
Vancouver(2)*
Victoria
Surrey (native)
Duncan
Vernon
Richmond
North Vancouver

** Recommend one of the Vancouver offices be a native office*

Pilot projects are recommended at: New Westminster; Prince George; and Kamloops.

A six-lawyer team, including an immigration pilot project, is recommended for Vancouver Gastown.

Smaller offices are recommended for Sechelt, Squamish, Salmon Arm and either Parksville or Port Alberni.

TABLE 2
Recommended Staff Complements

	Present Staff			Years 1 and 2			Year 3		
	L	PLP	SS	L	PLP	SS	L	PLP	SS
Existing Branch Offices									
Burnaby	2	0	3	4	1	5	8	2	9
Campbell R.	1	0	2	3	1	4	4	1	5
Chilliwack	2	0	2	4	1	4	5	1	5
Dawson Creek	1	0	1	2	1	2	2	1	2
Ft. St. John	2	0	2	2	0	2	2	0	2
Kamloops	1.6	1	2.6	6	4	7	8	4	9
Kelowna	2	0	2.6	4	1	5	10	3	8
Langley	0	0	0	2	2	2	2	2	2
Nanaimo	2	0	3	4	1	5	8	3	9
Nelson	1	1	1	3	2	3	3	2	3
Prince George	2	0	3	8	1	9	10	3	11
Prince Rupert	2	0.6	1.6	3	1	3	3	1	3
Prisons Project	1	1	2.6	1	1	3	1	1	3
Surrey	2	1	3	6	4	7	10	6	11
Van. Gastown	5	4	13	16	8	21	44	12	37
Williams Lk.	1	1	1	2	1	2	2	1	2
SUB TOTALS	**27.6**	**9.6**	**43.4**	**70**	**30**	**84**	**122**	**43**	**121**
Existing Community Law Offices									
Abbotsford	1	1	2.6	3	2	5	6	2	8
Ft. Nelson	0	1	0	0	1	0	0	1	0
Kootenay	1	0	1.6	3	1	4	3	1	4
Maple Ridge	0	1	1	2	2	3	2	3	2
Nanaimo	0	1.6	0	0	2	0	0	2	0
New Westminster	0	4.4	2.7	6	8	9	6	8	9
Penticton	0	2	2	2	3	4	2	3	4
Powell R.	0	2	2	0	2	2	0	2	2
Quesnel	1	1	1.8	2	1	3	2	1	3
Victoria	3	1	6.8	7	4	11	12	6	16
SUB TOTALS	**6**	**15**	**20.5**	**25**	**26**	**41**	**33**	**29**	**48**
Existing Native Law Offices									
Burns Lk.	1	1	1	1	1	1	1	1	1
Ft. St. James	1	1	1	1	1	1	1	1	1
Ft. St. John	0	1	0	0	1	0	0	1	0
Hazelton	1	1	1	1	1	1	1	1	1
Massett	1	1	1	1	1	1	1	1	1
Merritt	1	2	1	1	2	1	1	2	1
Port Alberni	0	1	0	0	1	0	0	1	0
Carrier-Sekani	1	0	0	1	0	0	1	0	0
Skidegate	0	1	1	0	1	1	0	1	1
Smithers	0	3	1	1	3	2	1	3	2
Terrace	1	1	1	2	1	2	2	1	2
SUB TOTALS	**7**	**13**	**8**	**9**	**13**	**10**	**9**	**13**	**10**

Note: L = Lawyer PLP = Paralegal SS = Support Staff

	Present Staff			Years 1 and 2			Year 3		
	L	**PLP**	**SS**	**L**	**PLP**	**SS**	**L**	**PLP**	**SS**
Existing Area Directors									
Chetwynd									
Cranbrook									
Delta									
Duncan				2	2	2	2	2	2
Golden									
Invermere									
Kaslo									
Ladysmith									
Lillooett									
Maple Ridge									
Nakusp									
N. Vancouver				2	2	2	2	2	2
Parksville				1		1	1		1
Revelstoke									
Richmond				2	2	2	3	2	3
Salmon Arm				1		1	1		1
Sechelt				1		1	1		1
Sparwood									
Squamish				1		1	1		1
Ucleulet									
Vernon				2	2	2	2	2	2
SUB TOTALS				**12**	**8**	**12**	**13**	**8**	**13**
GRAND TOTAL	**40.6**	**37.6**	**71.9**	**116**	**77**	**147**	**177**	**93**	**192**
		150.7			**340**			**462**	

Note:

The Years One and Two totals include existing staff.

Conclusion

The difficulties facing the Legal Services Society are extensive and challenging. Their resolution will require the assistance and goodwill of all the interested parties.

While there are serious management and service delivery deficiencies, there are also strengths. A thorough overhaul is proposed, building on the best elements of existing service systems, and with new and closer working relationships among government, professional and community perspectives.

The key to successful change is dramatically improved leadership and management of the Legal Services Society.

Reform of service management is overdue. Financial and service coverage eligibility policies must be clear, public and consistently applied. Tariff and staff-delivered services must be adequately monitored and the Legal Services Society must ensure service quality.

Funding levels must be adequate. Present rates of expenditure represent an appropriate funding baseline; however, much better use can be made of those funds. Government is urged to provide the Legal Services Society with sufficient funds to meet its current commitments and end the present fiscal year without a deficit. The government is urged to cap the 1993/94 costs of the society at $98 million and to legislatively prohibit future deficits.

The priorities of the society must be re-ordered, both with respect to the relative emphasis placed on criminal, family, civil and administrative areas of law, and with respect to varying modes of service delivery. There must be an increased role for information and education components of client service delivery. Staff and tariff services must be considered parts of a whole service, not competing services. A continuing role for local offices in community and justice development initiatives must be preserved.

Increased attention and resources must be directed to family and civil/administrative areas of service. Mediation must be available in family cases. Local access to these services must be improved throughout most of the province.

The service mix must be improved with: increased use of paralegals and staff counsel; better support for, and better working relationships with, lay advocacy services; and better working relationships between staffed services and the tariff bar.

The various service delivery structures should be integrated into a community-based model. Regional and local policy direction should be set by community boards. Employees of the system should be protected by a master/component arrangement respecting wages, working conditions and career opportunities.

Tariff rates must be made equitable, and should also be addressed within a framework of lawyer compensation for public sector work. Criminal tariff rates are at least at a market level, while family and human rights tariffs require improvement. Consideration should also be given to a limited civil tariff and to a senior tariff for difficult, complex cases. Increases and changes should be funded by a minor reduction to the criminal tariff.

Additional staffed offices and staffing increases to existing offices are proposed, with immediate implementation, and funded by transferring approximately one quarter of the caseload from tariff to staff delivery. This will allow for increased service flexibility, improved monitoring, increased civil/administrative caseloads, and improved family law services. It is intended that staffed and tariff services work increasingly together. In the third year, provision is made for further expansion of the staffed system, not to exceed half the total caseload.

At the proposed funding level, adequate flexibility is available to the Legal Services Society to implement the service delivery changes proposed.

Changes to the *Legal Services Society Act* are proposed to clarify the mandate of the society, address the role of paralegals and courtworkers, implement comprehensive bylaws and conflict of interest measures, and expand the appointing authorities to the board of the society in order to ensure it reflects more diverse interests.

Implementation of the proposed changes can commence without delay. They need not await legislative amendments. The readiness of existing community and native community law offices, and of many society branch offices, to implement changes of the sort proposed in this review also means that progress can be made while society headquarters simultaneously brings on board its new management team and deals with a number of outstanding administrative and policy matters. There is no reason to believe the suggested implementation schedule cannot be achieved.

These proposals form an integrated plan to address problems respecting service quality and accessibility, funding and management; it is not intended that the various interests pick the recommendations they like and dismiss the rest. Government must recognize that funding at levels below present rates of expenditure will result in serious service inadequacies to those most in need, especially in the family and administrative law areas. The society and the legal profession must give greater weight and respect to service delivery approaches which are community-based, and use a wider mix of staff and tariff resources. They must also recognize that in so doing, better services and better use of public funds will result.

There are a number of issues requiring further examination:

- Legal services for young offenders: the review was unable to complete consultations with judges, lawyers and others respecting this area of work.

- Legal services for prisoners: further consultations are required respecting the range of services required, service models and service management. In particular the proposal from the Prisoners' Legal Services office in Abbotsford requires sympathetic study.
- The review did not thoroughly explore the potential for information and education services, for their increased role in client services planning and delivery, or for an increased headquarters role as a legal resource centre for the system. These all require additional discussion with the professional staff of the society.
- The government and the Legal Services Society are urged to undertake a full consultation process respecting native legal services at the earliest opportunity. It is unfortunate that it was not possible for these issues to be dealt with adequately in this review; care has been taken in these recommendations not to pre-judge the outcome of consultations with native community law offices and first nations communities and organizations.
- The review proposes that government assign to the Legal Services Society the responsibility and budget for funding and supervising lay advocacy, in order to address questions of the independence, qualifications, training and legal supervision of lay advocates. Additional review and consultation will be required to give effect to this proposal.
- The review heard many calls for change in other parts of the justice system, in other services and in other areas of provincial and federal government policy. These will be summarized in a subsequent memorandum; time did not permit adequate research and reflection on them. The review remained focused on issues specific to legal aid services. There is no doubt that changes to larger areas of government policy, together with an integrated, cross-systems approach to issues such as family law, can have a positive impact on legal services. The government is urged to explore these matters.

This review concludes by reinforcing its primary messages to those with direct interests in the delivery of legal services:

To the Legal Services Society, the staffed services, the tariff bar, the legal profession as a whole, and the community advocacy agencies who work with the legal aid system: there is no inherent superiority of one form of delivery over another. Arguments to the contrary increasingly seem self-interested. Arguments that staffed services or the use of paralegals imply inherently second-class service are simply wrong. For example, client-need statements emerging from other family law reviews confirm the patterns found in this review. The evidence is overwhelming that both tariff and staffed services are legitimate and necessary; that lay advocates, paralegals, staff counsel, tariff counsel and even other disciplines are all required; that many matters do not require lawyers and do not require formal proceedings; and above all that better working relationships among the various service providers are essential.

To the government: the delivery of legal aid services to those who cannot afford them must be acknowledged and respected as a right in our society. These services must be funded at an adequate level and in a secure manner. They must be delivered and overseen by an agency independent of government interference. At the same time, government must require that services are provided in a competent, cost-effective, accountable manner.

Appendix 1

Consolidated List of Recommendations

Appendix 1

CONSOLIDATED LIST OF RECOMMENDATIONS

The page numbers following each recommendation refer to the page where it will be found.

Mandate and Legislation

1. The act should contain a more inclusive definition of "legal service" and should specify the services, including information, summary advice, self-help assistance and referral, which should be available without financial qualification. (Page 20)
2. The act should assign to the society clear responsibility for the effective planning, management and overall care of public legal services. (Page 20)
3. The act should assign to the society responsibility for lay advocacy services funding, service delivery, legal supervision and training. (Page 20)
4. The act should be amended to strengthen the independence of the Legal Services Society; for example, by the following:

   s 10. The society has authority to determine the priorities and criteria for the services it or a funded agency provided under this act [and to allocate its funds as it deems most effective to meet its objects]. (Page 21)
5. Section 10 of the act should be amended to enable government to receive service delivery, financial and other management information, at such times and in such formats as it desires, providing that client identities are not disclosed. (Page 21)
6. The act should provide that trustees may be appointed by the Attorney General in the case of bankruptcy or the inability or unwillingness of the directors of the society to discharge their duties. (Page 22)
7. The procedural rules of the society should be codified into a set of comprehensive bylaws approved by regulation. (Page 22)
8. The administrative practices of the Legal Services Society should be designated within the jurisdiction of the Office of the Ombudsman. (Page 22)
9. The rights of paralegals and courtworkers to appear in court in limited circumstances should be reviewed further by the society, the Law Society and the judiciary. The society and courtworker organizations should canvass their staff respecting both in-court roles and perceived needs; the review should include representative paralegals and courtworkers. (Page 22)

10. The Legal Services Society should establish a comprehensive policy respecting conflict of interest, covering all facets of the organization and service delivery; provisions respecting board members should be included in bylaws established by regulation. The society should be included in any comprehensive conflict legislation enacted respecting public bodies. (Page 23)

11. The society bylaws should require that any lawyer appointed to the board cease all remunerative work with or through the society while a board member; and that any director of a community or native community law centre appointed to the board step down from that role while a board member. No member of the board should engage in remunerative services with or through the society, except in their capacity as directors, and as provided by regulation. (Page 23)

12. The act should be amended to provide for the following mechanism to appoint directors:

    - four directors, one of whom shall be the chairperson, appointed by the Lieutenant-Governor in Council, on the recommendation of the Attorney General;
    - three directors appointed by the Law Society, after consultation with the B.C. Branch of the Canadian Bar Association;
    - two directors elected by the boards of community law centres, in accordance with the service delivery structure proposed in this review;
    - two directors elected by the boards of the native community law offices. (Page 29)

13. The chief executive officer of the society, who should not be a voting member of the board, should be appointed by the Lieutenant-Governor in Council on the recommendation of the board of the society. (Page 29)

14. In appointing directors, the appointing authorities should be required to consider: geographic representation; client constituency interests; needed program managment skills; and in appointing lawyers, the areas of law of significant concern to clients. (Page 29)

15. A per diem established by regulation should be payable to directors for time, together with necessary expenses such as travel and child care. (Page 29)

Leadership and Management Issues

16. The general direction of the Deloitte & Touche recommendations is endorsed. Those recommendations which are consistent with this review should be adopted at the earliest opportunity. Other proposals may require reassessment in light of this review and further consultations regarding native programs. (Page 36)
17. The society should involve more directly the education, information and legal resource staff in client service planning and management, and should consult with local offices respecting their information, education and legal resource needs. (Page 38)
18. The society, in co-operation with all local offices, should review its management information needs and ensure that adequate and timely information is available to those who need it. All work should be reported. The society's data system should be a primary tool for service evaluation and planning. Information should be consistently tracked and reported in a format that is both complete and understandable. Workload data should be publicly available as a matter of routine. (Page 39)
19. The society, in consultation with local offices and the bar, should develop measures of service productivity which allow for the appropriate assessment and comparison of all aspects of service delivery. (Page 39)
20. The society, in consultation with local offices and the bar, should design an ongoing service evaluation process with provision for both data analysis and more subjective measures, such as community needs for service, service responsiveness to need, accessibility and quality, and provide opportunity for public reporting and input. (Page 39)
21. The society should ensure adequate staffing for planning, policy analysis and development, evaluation, data analysis and distribution, and research including provision of information, analysis and advice to local offices. (Page 39)
22. The society should assign all staffed offices equal authority for tariff administration matters. (Page 40)
23. The society should ensure that each office has a defined area of service, most often defined geographically; that each has an annual operating budget covering all aspects of service delivery, including tariff services and area director services within the service area; that spending authority for that budget is decentralized to local offices; and that local offices be regularly provided with financial information on spending patterns for all services. (Page 40)

24. Effective staff supervision processes must be instituted in all local offices, along with appropriate responsibility and authority, including responsibility for handling grievances. Supervisory staff must be appropriately trained. A supervision strategy must deal with both control issues, which ensure that suitable policies and procedures are enacted and followed, and developmental issues, which support the optimal use of the talent and potential of staff in service delivery. (Page 41)

25. The Legal Services Society should maintain control of the wage and benefit grid for the entire system, including all local offices, to ensure equitable working conditions for all those employed within it. (Page 41)

26. The society should enter discussions with the affected organizations and unions to achieve wage and benefit consistency throughout the entire system, and to facilitate recognition of seniority and ease of movement throughout the system. (Page 41)

27. The society should undertake a review of training requirements, and should recruit additional training staff. (Page 42)

28. Staff training needs should be incorporated into service planning. (Page 42)

29. The society should consult with the tariff bar regarding offering training and workshop opportunities for lawyers engaged in tariff or other poverty law work, on a cost recovery basis. (Page 42)

30. The society should design and implement a plan to extend training and legal supervision resources to lay advocates of community-based organizations. (Page 42)

31. The society should immediately establish effective, ongoing, multidisciplinary consultation processes with community and professional interests. It should also directly involve local office boards and staff, and the various specialist sectors of the legal profession. (Page 49)

32. The society should formally recognize the Association of Community Law Offices, and the parallel association of native community law office boards if established, as formal liaison structures and consult with them as it does with the legal profession through the Legal Aid Liaison Committee. (Page 50)

33. The society should establish effective, ongoing consultative relationships with groups and agencies which could assist in client service planning, including multicultural service agencies, aboriginal organizations, mental health advocacy groups, anti-poverty groups, organizations of the disabled, women's groups, among others. (Page 50)

34. The society's consultation process should include opportunities for interactive discussion among the various interests in environments which are non-confrontational. (Page 50)

35. The province and the society should develop a mechanism to account for demand-driven and uncontrollable volume increases, and these increases should be reflected in budget baselines, provided the society can demonstrate to Treasury Board that it is managing all its services in an effective manner. (Page 51)

Service Delivery Management

36. The society must review its financial eligibility policies to ensure they are fair, equitable and consistently enforced; and that those charged with the administration of flexible income tests are provided with adequate guidelines to assist assessment and the exercise of discretion. In developing these policies, it should seek both external expertise and the advice of those field staff who now review and decide on applications. (Page 60)

37. The society must ensure a reasonable verification of income and assets. Local offices must be assured that questionable applications will be investigated, and that fraud will be prosecuted. (Page 60)

38. The financial eligibility guidelines should be published. (Page 60)

39. The society and the Law Society should consider replacing Ruling G8 with an administrative mechanism to simplify the processing of requests to convert to private retainer, while protecting the legitimate interests of clients. (Page 60)

40. Lawyers representing legal aid clients should be required to report financial information not indicated at the time of application, or changed financial circumstances, and should be entitled to request an eligibility review if they consider it necessary. (Page 60)

41. The society is urged to design and implement a graduated scale approach to financial eligibility. (The review notes a successful experiment in Manitoba intended to extend coverage to the working poor.) (Page 60)

42. The society should eliminate the $10 user fee levied to income assistance recipients, but seldom collected; and should replace the $30 user fee for other clients with a graduated scale approach to client contributions. (Page 60)

43. The society must place the present process of appeal to the executive director, with a simple, fair and preferably local mechanism for clients who wish to appeal an eligibility or other administrative decision. (Page 61)

44. The society should review its data to examine the profiles of its criminal law, family law and other clients, including income and employment status; and with attention to geographic differences. This review should be publicly released. (Page 61)

45. The society should minimize coverage restrictions on the basis of type of offence or type of family action. (Page 62)

46. The society must ensure an equitable and appropriate allocation of resources for civil, administrative, family and criminal matters. (Page 62)

47. A more flexible, need-driven approach to service delivery should be matched by a more flexible approach to coverage, with the goal of extending assistance to many first offences and even guilty pleas; service may not necessarily entail tariff referral, or staff counsel involvement. (Page 62)

48. The society should ensure that coverage policies, especially in family law, provide clear guidelines to those exercising administrative discretion, eliminate arbitrary distinctions, make the guidelines available to applicants, and provide fair appeal mechanisms. (Page 62)

49. Government is urged to consider ways to achieve an integrated, comprehensive approach to all family law services, and to involve legal services, lay advocates and client constituency groups in that process. (Page 63)

50. The society must be responsible for all aspects of tariff service management, including both ensuring timely and effective service to clients, and efficient administration for tariff practitioners. (Page 63)

51. Local offices must develop and maintain good working relationships with their local bar, and exercise flexibility and discretion in tariff management. (Page 63)

52. Referral policies and procedures used by local offices must be clear and fair, and they must be publicly available. The society must ensure that the referral process is not manipulated in favour of particular lawyers and must ensure that complaints are addressed. Courtworker services must also avoid unfair practises in referring or recommending lawyers. (Page 64)

53. The role of courtworker organizations with respect to legal aid intake seems confusing and less than efficient; the society is encouraged to carefully review its needs, in consultation with affected organizations. (Page 64)

54. The society is urged to clarify its policy respecting change of lawyers and enforce the policy. Clients need to be clearly advised of the policy. The policy should not be used as a way to avoid addressing poor service by some practitioners. (Page 64)

55. The society should require that billing forms and staff worksheets note all adjournments, who initiated the adjournments and the reasons for them. (Page 65)

56. The society should delegate as much approval authority as possible to local offices, together with suitable policy guidelines to assist them. (Page 65)

57. The government should ensure that the society's cash position allows it to pay its accounts within a normal 30-day period. (Page 65)

58. The society should work with the family bar to reduce the necessity of tariff lawyers carrying disbursements for long periods. (Page 66)

59. User fees should be replaced by a graduated scale of contributions, based on ability. Contribution policies should be consistently enforced; and exemptions from the policy, if provided for, should be consistently applied. (Page 66)

60. All clients should be provided with simple, plain language information which outlines the services being provided and ways to appeal in case of difficulty. (Page 66)

61. The society should be entitled to make selective lawyer referrals, provided it follows clear, fair and published policies, and provides a mechanism for review and appeal. There should be a preference for experienced counsel in complex, difficult cases; there should be a preference for family law or other specialists when available and as appropriate; lawyers who abuse the tariff should have referral privileges withheld; and the society should have the right not to refer clients to lawyers with habits of missing appointments, missing court appearances, verbally harassing clients, or otherwise providing poor service. The society should consult with the Law Society in developing a detailed policy. (Page 69)

62. Local offices should have the following roles in monitoring tariff services:

    - offices and clients should receive copies of tariff bills;
    - there should be sufficient staff counsel so that they can participate in tariff services, taking an appropriate share of referrals and duty counsel work; these must be a normal caseload mix, rather than all duty counsel and guilty pleas; and
    - they should convene periodic liaison meetings with the local bar, including discussion of difficulties and concerns. (Page 70)

63. The society should implement a central monitoring process, using data from billing forms to monitor various service patterns, and conduct audits where patterns or complaints are warranted. The society should also institute random audits. (Page 70)

Current State of Service Delivery

64. There must be regular opportunities for the private bar, local offices and community agencies to discuss service delivery concerns. These parties must acknowledge one another as important contributors and partners, with none owning exclusive rights over the service. Working relationships among them must be enhanced. (Page 71)

65. Area directorships should be phased out in favour of staffed offices wherever case volumes justify provision of staffed services, and leaving at least 40% of cases to be handled by the private bar. (Page 73)

66. The society is urged to improve support for advocacy services for people with disabilities, including self-advocacy, and to improve the legal services system's understanding of and responsiveness to disability issues. (Page 74)

67. The society is urged to improve the accessibility of legal services to minority communities; to increase the availability of information in languages other than English; to support the advocacy services of minority organizations; and to effectively and quickly increase the multilingual and multicultural diversity of its own staff. (Page 75)

68. The use of paralegals in the delivery of legal services must be significantly expanded for reasons of both service quality and cost-effectiveness. The society should develop, with the full participation of paralegals in the system: standards governing their work; criteria for qualifications; and training standards. The society should take into account the value of ensuring career entry to persons who have been disadvantaged and self-help advocates. (Page 76)

69. The society should provide staff training and legal supervision to lay advocates in a variety of community based agencies and organizations; and should develop a plan to extend funding support to the salaries of lay advocates. (Page 77)

70. Government should carefully assess emerging demands for advocacy services and should endeavour to provide adequate funds for them. It should assign funding and administrative jurisdiction of advocacy services to the Legal Services Society in order to ensure independence for the service providing ministries; provide adequate legal supervision; and address issues of qualifications, training and accountability. (Page 77)

71. The society should consult with agencies whose clients enter the criminal justice system, and with the bar, to more fully consider the circumstances and needs of those clients, and to consider methods of ensuring that legal services are responsive to their needs. (Page 80)

72. The society should develop measures to ensure an adequate pool of senior counsel is available to cover difficult, complex cases, and should consider a senior tariff. The society should review these issues in consultation with all affected parties. (Page 81)

73. The Legal Services Society should establish both urban and remote community experiments in the use of paralegal positions to assist in the effective delivery of criminal legal aid services, including assignments intended to reduce criminal legal aid intake, to reduce the number of cases requiring lawyer service and to increase the efficiency of lawyer service through better information gathering and other measures. (Page 81)

74. Family legal aid services must receive greater priority. Action is necessary to address the widespread dissatisfaction with the accessibility and quality of present services. The family tariff should be increased. (Page 93)

75. The development of appropriate models of service delivery is a task which must be shared by the society, the family bar and community-based agencies, including both local offices and groups which provide advocacy services for those who need family legal aid. (Page 93)

76. Advocacy networks, such as transition houses and multicultural service agencies, must be seen as part of the service system. The society should at the very least extend to these advocates training and legal supervision services and should partially fund them. (Page 93)

77. Local offices must do much more than eligibility assessment and lawyer referral. Staffed and tariff services must work much more closely together. There should be a bridging process between intake and lawyer referral. Lawyers should not carry all responsibility for client emotional support, consideration of needs and options, or the provision of basic information. Cases should generally be referred to lawyers once they can be acted on in an efficient manner; other supports should be maintained while the lawyers deal with urgent matters. A preliminary review and screening process should be provided by local office staff and the office should remain involved with the client throughout the process. (Page 93)

78. The use of paralegals in providing family law service should be significantly enhanced, both to support and assist the work of lawyers and to handle work which does not require lawyer involvement. (Page 93)

79. Both tariff and staff counsel are appropriate mechanisms to provide family law services; the balance between the two will necessarily vary among communities. Effective consultation between bar, local offices and knowledgeable advocates should be sufficient to direct what will work most effectively. (Page 93)

80. The society is urged to develop a mediation capability in family matters. This resource should be tied to, and controlled by, local offices, and it should be used before lawyer referral. Caution should be exercised in determining who should act as mediators on what issues: many situations clearly call for legal training and skill; however, lawyers are not essential in all cases. Mediation should not be used where violence or significant power imbalances are factors. (Page 94)

81. There is an urgent need for the legal services system to respond to the legal needs of women and children. The society must be much more creative and flexible in its assessment and delivery of family legal aid. Further research is desirable but must not become an excuse to maintain an unacceptable status quo. (Page 94)

82. The Legal Services Society should immediately implement measures to improve the availability of service in the civil and administrative law areas, particularly through the addition of staff lawyers and paralegals to existing offices; and through the replacement of a number of area directorships with staffed offices. (Page 101)

83. The society should ensure a policy framework and resource allocation strategy designed to ensure that civil and administrative law receive their appropriate share of resources and that service availability is consistent throughout the province. (Page 102)

84. The society should develop a limited tariff for difficult or especially time consuming civil and administrative cases, to be used at the discretion of local offices. (Page 102)

85. The organizational, staffing and service delivery models established by the community and native community law offices provide an effective base for improving civil and administrative law services. (Page 102)

86. The government should review the *Young Offenders Act* and practises respecting court-appointed counsel for youth, especially those who reside with their families and where the families are financially well-off, and either propose changes to administrative practice or recommend legislative changes to the Government of Canada. (Page 103)

87. Consideration should be given to specialized services in family and youth matters, including service to youth charged under the *Young Offenders Act*, in correctional programs and in care of the Superintendent of Family and Children's Services. (Page 103)

88. The tariff for human rights cases should be established at a level comparable to other legal aid tariffs. (Page 105)

89. A Vancouver-based human rights resource should be established, or contracted with an existing agency, to provide specialized client service, work with the private bar and be a provincewide resource. (Page 105)

90. Assistance with advocacy training, legal supervision, information services and funding should be available to human rights advocacy organizations, in a manner similar to that proposed in civil and administrative matters. (Page 105)

Current State of Budget and Finance

91. Government is urged to accept that present levels of expenditure (projected at $97.6 million for 1992/93) are necessary to provide an adequate basic level of service. Cost reductions would necessarily entail unacceptably large service cutbacks, most affecting those clients requiring assistance in family and administrative law matters. At the same time, the Legal Services Society can, and must be required to make much better use of this financial allocation. (Page 121)

92. The government should allow the society sufficient funds in 1992/93 to meet its present commitments, implement the proposed service delivery and structural change, and complete the fiscal year without an accumulated deficit. (Page 121)

93. The government should legislatively prohibit the society from incurring future deficits. (Page 121)

94. The 1993/94 allocation should be capped at the 1992/93 projected expenditure. (Page 121)

95. The government should make the above financial commitments contingent on immediate acceptance by the society of the management, structural and service delivery strategies contained in this review, including the re-allocation of funds and priorities; and on demonstrated, rapid progress towards implementation. (Page 121)

96. The society should be required to submit work plans covering the balance of 1992/93, 1993/94, 1994/95, to the ministry and Treasury Board, in a manner and format acceptable to them, and to provide detailed quarterly expenditure, caseload and implementation progress reports. (Page 121)

97. A complete program and financial audit should be completed by September 30, 1994, to review workload capacity, cost-effectiveness and service quality and to review whether further adjustments are required.

Note: the financial recommendations do not account for the following:

- the outcome of consultations respecting native legal services (although some expansion is allowed for);
- any decisions by government respecting new advocacy services as recommended in this review; and
- any impact on the society of other changes by the federal or provincial governments in such areas as family law, the Criminal Code or immigration legislation. (Page 122)

98. The society should rework tariffs to achieve relative equity. This should be accomplished by reducing the criminal tariff and raising the others. At present rates, a criminal tariff reduction of approximately 10% overall would allow for significant improvements to the family and human rights tariffs. It does not appear that the immigration tariff is problematic. (Page 124)

99. The society should establish a limited civil and administrative law tariff to complement staffed services. Referral should be at the discretion of local offices and is intended for cases which are either lengthy or require particular expertise. (Page 124)

100. Government should develop a comprehensive framework for publicly-funded lawyer compensation and the Legal Services Society should be included in that process. If tariffs are ahead of other lawyer compensation, they should be frozen until appropriate relationships are achieved, or adjusted upwards on a phased basis as needed. (Page 124)

101. For the long term, there should be a continuing relationship between increases to tariff rates and wage increases in the staff system. (Page 124)

Proposed Structural and Service Delivery Model

102. The organization and management of local and regional services should be integrated under the direction of community- based boards. (Page 143)

103. All existing community and native community law offices should be retained. Branch offices should convert to community-based status within 18 months and the society should assign staff resources to assist this process. (Page 143)

104. Each office should be allocated a distinct geographical service area, and be assigned authority and budget for all legal aid services within that area, including tariff services and any area directors serving smaller communities. (Page 143)

105. Community-based offices should be required to be reporting non-profit societies established for the purpose of providing legal services, with membership open to any individual resident within the defined service area and to any constituted body located within the service area. They should also be registered as charitable organizations. (Page 143)

106. Boards would be elected annually, with no more than 40% of their directors appointed, and provided that specific bylaw provision defines the appointing authorities. Provision should be made for reserve-based and urban first nations offices, specialist offices, and specialized services contracted to other agencies and organizations. (Page 143)

107. Each board would assume authority for the planning and management of all legal aid services within its mandate, and for acting as the local agent of the Legal Services Society. An operating agreement should define the relationship and set out the authority and duties of the office. Annual service plans and budgets would be developed by the local board, and be subject to the approval of the society. (Page 143)

108. The society, in consultation with local offices, should design a regional model for community boards, giving appropriate consideration to population, geographic and other considerations. (Page 144)

Appendix 2

Professional Conduct Handbook of the Law Society

Ruling G8

Appendix 2

PROFESSIONAL CONDUCT HANDBOOK OF THE LAW SOCIETY

Ruling 8 Legal Aid Cases

Except for any costs he collects from the opposing party in any action referred to him by the Legal Services Society, no Member who has received instructions in such a matter shall take or receive for himself or his firm any payment or other benefits in respect of any professional services provided by him in connection therewith other than payments which have been authorized by the Legal Services Society.

No member shall enter into any other financial arrangement for the payment of fees with a client referred to him by the Legal Services Society, other than that which has been authorized by the Legal Services Society unless he shall first notify the Legal Services Society and obtain its consent to such other arrangement.

When a Member receives any monies other than as authorized by the above, from or on behalf of a client referred to him by the Legal Services Society or on behalf of the Legal Services Society, he shall remit these forthwith to the Legal Services Society.

Appendix 3

Detailed Calculations, Showing Efficiencies and Savings

Appendix 3

Detailed Calculations, Showing Efficiencies and Savings

Phase One: Years One and Two

The following model shows the savings and efficiencies which can be achieved by implementing the Years One and Two staffing increases shown in Table Two (page 153), and paid for by a transfer of cases from tariff to staff delivery. The positions allocated to each location for family and criminal matters are obtained by strictly applying the formula described below, using the Legal Services Society caseload data for those locations. 1991/92 caseload statistics are used throughout.

The model demonstrates the minimum level of staffed services considered appropriate. It illustrates the additional service which can be achieved at no extra cost; the money made available to address other needs; the amount of staff counsel spare workload capacity; and the effect of reducing tariff referrals by approximately 25%.

Data Used

Average Tariff Referral Costs

1991/92 figures adjusted to account for the proposed tariff rate changes

Criminal law	$ 885 per case
Family law	$1,694 per case

Legal Services Society Staff Costs

including a +10% wage/benefit adjustment, overhead and start-up costs

Criminal: one team (one lawyer, one support staff) costs $152,143, i.e. equivalent to 172 tariff referrals.

Family: one team (one lawyer, one paralegal, one support staff) costs $218,243, i.e. equivalent to 129 tariff referrals.

Workload

The average workload of a criminal law lawyer is cautiously estimated at 223 new cases per year; and 142 new cases for a family law lawyer.

Proposed Transfer of Cases from Tariff to Staff Delivery

Table Two shows the location-by-location distribution of the proposed additional staff, as summarized below. The number of cases shown represents the caseload which must be transferred from tariff to staff delivery to pay for the staff.

Criminal Cases	*Cases*
18 new teams at 172 cases each, existing locations	3,096
4 new teams, new locations	688
4 new teams replacing area directors	688
4 combined criminal/family teams replacing area directors	688
Prince George project, 5 teams	860
New Westminster project, 4 teams	688
Gastown, 7 additional teams	1,204
Total	**7,912**

Family Law Equivalent Costs	*Cases*
14 new teams at 129 cases each, existing locations	1,806
4 new teams, new locations	516
4 new teams, replacing area directors	516
Kamloops project, 3 teams	387
New Westminster project, 2 teams	258
Gastown, 2 additional teams	258
Total	**3,741**

* Lawyers

Additional Staff

- One lawyer, one paralegal, one support staff, funded from immigration referral reductions, Vancouver, i.e. 129 cases; no net cost.
- Nine new paralegals for civil/administrative work, various locations; cost: 9 x $ 66,100 = $594,900.

Resulting Spare Workload Capacity

The following figures show the surplus workload capacity remaining after the above cases have been transferred from tariff to staff delivery. The calculation is the average workload per lawyer less the number of cases required to pay for the staff team, times the average cost per tariff case. The family law figures do not take into account the additional benefits which result from inclusion of a paralegal in each team.

Criminal:

46 teams, 51 cases each at $885	$2,076,210

Family law:

29 teams, 13 cases each at $1694	638,638
Sub Total	**$2,714,848**
Cost of additional paralegals	594,900
Net Savings	**$2,119,948**

These savings are available for changes in headquarters programs, assumption of financial responsibility for advocacy programs presently funded by the Law Foundation, and/or some absorption of case volume growth.

Referrals Profile

At present, over 95% of accepted criminal applications, and more than 70% of accepted family applications are referred to the tariff bar. This model alters that referral rate as follows:

	Criminal	Family
Tariff	32,382	13,605
Staff	10,258	4,118
Total	**42,640**	**17,723**
Tariff % left	76 %	77 %

Phase Two: Year Three

This model illustrates the effect of an approximately 50/50 share of cases between tariff and staffed services. The location-by-location staffing schedule is shown in Table Two; it achieves as close to a 50/50 share in each location as possible. 1991/92 caseload data are used.

Data Used

Total Referrals to Tariff and Staff Services

43,880 criminal (42,640 to tariff, 1,240 to staff)
19,895 family (17,723 to tariff, 2,172 to staff)

Average Tariff Referral Costs

1991/92 figures adjusted to account for the proposed tariff rate changes

Criminal law	$ 885 per case
Family law	$1,694 per case

Staff Position Costs

Society staffing costs, enhanced by 10% plus operating and start-up costs

Lawyer	$92,404
Paralegal	66,100
Support Staff	59,739

Calculation of Service Delivery Costs In Present System	**Dollars**
42,640 criminal referrals at $885	$37,736,400
17,723 family referrals at $1,694	30,022,762
1,240 staff disbursements criminal at $38	47,120
2,172 staff disbursements family at $168	364,896
Transcripts, duty counsel, area directors	7,365,000
Present staff costs, per LSS budget	12,726,690
Estimated total cost of delivery system	**$88,262,868**

Calculation of Service Delivery Costs at 50% Tariff Delivery and 50% Staff Delivery

Tariff	**Dollars**
23,456 criminal referrals at $885	$20,758,560
11,475 family referrals at $1,694	19,438,650
Estimated total tariff costs	**$40,197,210**

Staff Costs	**Dollars**
116 lawyers at $87,904	$10,196,864
61 lawyers at $92,404	5,636,644
77 paralegals at $61,600	4,743,200
16 paralegals at $66,100	1,057,600
147 support staff at $55,239	8,120,133
45 support staff at $59,739	2,688,255
Disbursements at $38 (20,424)	776,112
Disbursements at $168 (8,420)	1,414,560
Transcripts, duty counsel, area directors	7,365,000
Estimated total staff costs	**$41,998,368**

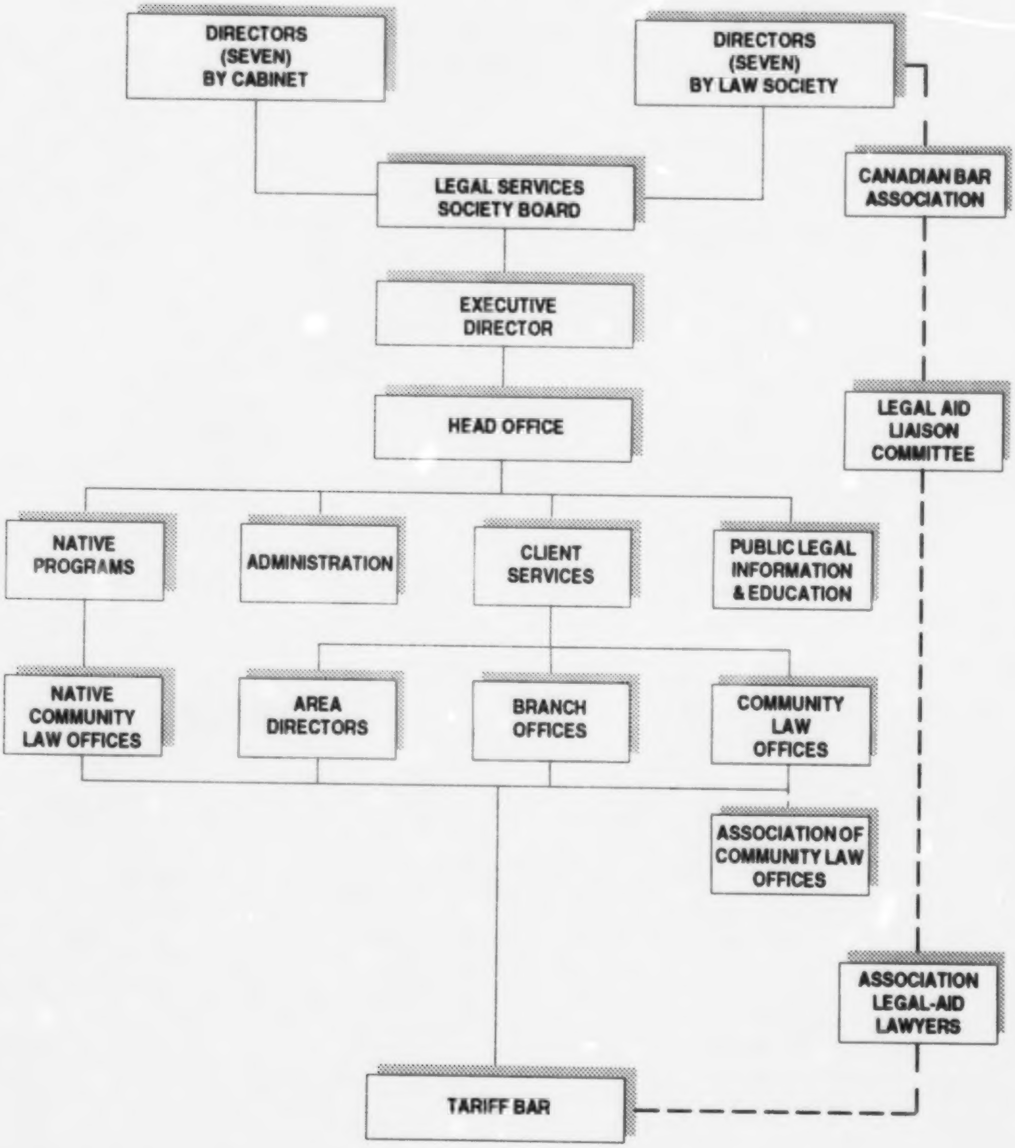
Reconciliation	**Dollars**
Estimated cost using present system	$88,262,868
Estimated cost using proposed system	82,195,578
Estimated savings using model data	**6,067,290**

Note: Additional savings of $531,000 will accrue in Year Four as $4,500 in start-up costs are included in each new Year Three position.

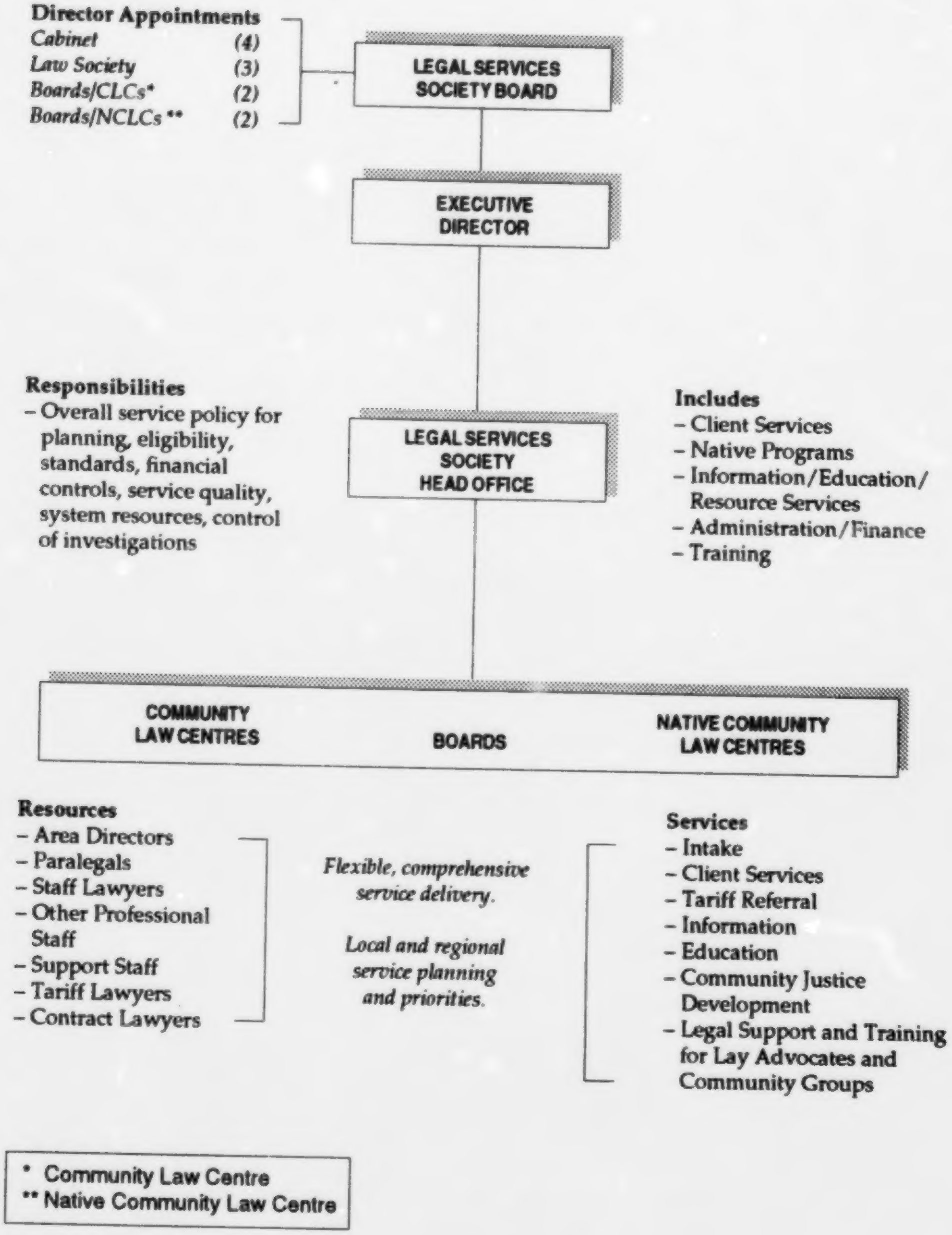
Appendix 4

Organization Charts

Legal Services Society Existing Client Services Organization Chart


DIRECTORS (SEVEN) BY CABINET
DIRECTORS (SEVEN) BY LAW SOCIETY
CANADIAN BAR ASSOCIATION
LEGAL SERVICES SOCIETY BOARD
EXECUTIVE DIRECTOR
HEAD OFFICE
LEGAL AID LIAISON COMMITTEE
NATIVE PROGRAMS
ADMINISTRATION
CLIENT SERVICES
PUBLIC LEGAL INFORMATION & EDUCATION
NATIVE COMMUNITY LAW OFFICES
AREA DIRECTORS
BRANCH OFFICES
COMMUNITY LAW OFFICES
ASSOCIATION OF COMMUNITY LAW OFFICES
ASSOCIATION LEGAL-AID LAWYERS
TARIFF BAR

Legal Services Society
Proposed Organization Chart


LEGAL SERVICES SOCIETY BOARD
EXECUTIVE DIRECTOR
LEGAL SERVICES SOCIETY HEAD OFFICE
COMMUNITY LAW CENTRES
BOARDS
NATIVE COMMUNITY LAW CENTRES

Director Appointments

Cabinet	*(4)*
Law Society	*(3)*
*Boards/CLCs**	*(2)*
*Boards/NCLCs***	*(2)*

Responsibilities

- Overall service policy for planning, eligibility, standards, financial controls, service quality, system resources, control of investigations

Includes

- Client Services
- Native Programs
- Information/Education/Resource Services
- Administration/Finance
- Training

Resources

- Area Directors
- Paralegals
- Staff Lawyers
- Other Professional Staff
- Support Staff
- Tariff Lawyers
- Contract Lawyers

Flexible, comprehensive service delivery.

Local and regional service planning and priorities.

Services

- Intake
- Client Services
- Tariff Referral
- Information
- Education
- Community Justice Development
- Legal Support and Training for Lay Advocates and Community Groups

* Community Law Centre
** Native Community Law Centre

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